

Supreme Court, U.S.
FILED

No. 121 0

081091 DEC 18 2008

06-16976

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

The Clerk, Washington, D.C. 20543

Johnnie L. Brown PETITIONER

Vs.

John E. Potter, Postmaster General

United States Postal Service RESPONDENT(S)

A PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals, 9th Circuit

P.O. Box 193939

San Francisco, CA 94102-3493

A PETITION FOR A WRIT OF CERTIORARI

Johnnie L. Brown

4851 Walnut Street

Oakland, CA 94619-2558

(510) 689-9341

QUESTIONS PRESENTED

The following questions are presented for your review. Questions that was raised in the 9th Circuit Court Of Appeals that need to be resolved..

1. Did The 9th Circuit Court of Appeals decide an important question of federal law, that has not been, but should be settled by this Court, in ruling that no credible evidence was presented that the treatment petitioner received at work was retaliation for filing EEO Claims?

2. Did the 9th Circuit Court Of Appeals err in ruling that Petitioner's remaining contentions are unpersuasive?

3. Did The 9th Circuit Court of Appeals decide an important question of federal law, that has not been, but should be settled by this Court in affirming that petitioner failed to exhaust her administrative remedies, regarding her age and sex discrimination

4. Did the 9th Circuit Court of Appeals decide an important question of federal law, that has not been, but should be settled by this Court in ruling that Petitioner did not exhaust her administrative remedies, in regards to her constructive termination claim?

5. Did The 9th Circuit Court of Appeals decide an important question of federal law, that has not been, but should be settled by this Court, in regards to Petitioner's total mental and physical disability claim that the treatment she received at work caused her disabilities?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

Opinions Below _____	1
Jurisdiction _____	1
Constitutional And Statutory Provisions involved _____	1
Statement of the Case _____	2
Reasons For Granting The Writ _____	15
Conclusion _____	18

INDEX TO APPENDICES

APPENDIX A Decision Of The United States Court Of Appeals, Denying Rehearing 09-19-08

APPENDIX B Decision Of The United States Court Of Appeals Affirmed, 07-10-08

APPENDIX C Decision Of The United States District Court Trial, 07-10-08

APPENDIX D Decision Of The United District Court Denying Motion, 09-15-06

APPENDIX E Decision Of The United District Court, 09-15-04

APPENDIX F Petitioner's Right to Sue Letter.

APPENDIX G Petitioner's Exhibit #83, Which verifies that she official notified EEOC, and her constrictive termination should be before the Court, and (Ex# 1) Information, verifies that an EEOC complaint was filed on 09-23-99 after she left work on 08-18-99.

APPENDIX H Petitioner's declaration, supporting her case, (Ex#82-A), and Ella Murray's declaration supporting Petitioner's case, (Ex#82-82-E).

APPENDIX I Tante Robinson's declaration , supporting petitioner's case. (Expert Trial witness), The District Court, excused her from testifying in Court, and accepted her declaration in evidence, (Ex#82-B).

APPENDIX J Pastor Samuel Bobo, Sr. and Felicia Rumsey's declaration supporting Petitioner's case. They are aware of Petitioner's episodes that occurred, relative to her dissociation disorder. Pastor Bobo and Mrs. Rumsey testified in Court, (Ex#(s) 82-C & 82-D).

APPENDIX K Dr. Jeannie L. Rivoire, Ph.D, California Licensed Psychologist's medical report, supporting petitioner's case. Dr. Rivoire was excused from testifying in Court, and her medical report was accepted in evidence. (Ex#84), 79 & 79-B. Also, Dr. Jonathan Francis M.D.' medical report, verifying Petitioner's physical injuries and the Kaiser medical reports verifying that she was injured on 08-18-99

APPENDIX L Petitioner's evidence, verifying that the Respondents discriminated against her due to her age. See Ms. Gray's Affidavit, and other data verifying that, the Respondents treated younger male, female and Caucasian supervisors more favorably, than Petitioner. Ex#(s) 44, 45 & 72. The information also verifies that Lewis Buckingham was a similarly situated supervisor.

APPENDIX M Petitioner's evidence, verifying that the Respondents discriminated against her due to her sex, when younger male supervisors were treated more favorably. Mr. Buckingham's scheduled days were changed, while Petitioner's request was denied. (Ex#74). Supervisor Joe Perkins and Louis Buckingham were allowed more casuals. See Appendix L, Ex#(s) 44 & 45). Also, See Edna Gray's Affidavit.

APPENDIX N Petitioner's evidence, verifying that she was harassed by the Respondents and they were properly notified that Petitioner's working conditions had caused her life to become a living hell. See Ex#(s) 47 73, & 77.

APPENDIX O Petitioner's evidence, verifying that Ms. Colbert was a similarly situated supervisor, who was younger and she was treated more favorably than Petitioner. Ex#78.

AOPPENDIX P Petitioner's evidence, verifying that she was forced to work short. with a smaller number of employees than the other supervisors, and she was forced to work sacks of mail only. See (Ex#(s) 48, 49 & 69, Also, Supervisor, Tante Robinson's declaration, Appendix I.

APPENDIX Q Petitioner's evidence, verifying that she was retaliated against by the the Respondents, when they criticized her work, forced her to work sacks of mail only, and forced her to work large volumes of mail with a fewer employees than the other supervisors. See Ex#53. And also, See Ex#(s) 32, 36, 37, & 40, which also, verifies that Joe Perkins was Allowed to utilize more employees than Petitioner. as many as 95, while Petitioner was allowed to utilize only 12 to 20 employees.

APPENDIX R Petitioner's Calculations of Lost of Income, Lost Wages, Compensatory Damages, Pain and Suffering, and she accumulated Medical Bills.

APPENDIX S Petitioner's evidence, verifying that, Mrs. Bell made an error, when she issued Petitioner a letter of warning, denying her merit increase because the letter of warning did not relate to her performance. As Petitioner had performed over and above the Respondents' expectations. (Ex#85). Also, see FY 97's EVA Pay letter excluding Petitioner from the bonus, a copy of her EAS Performance Evaluation for 1996 and FY-97, and Ex# 18, which shows that Ms. Bell erred when she rated Petitioner unacceptable because during that period Petitioner processed over 482,599,019 pieces of mail in the 180 unit and over 8000 pieces of mail daily in the Express mail unit.

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

City Of Moorpark v. Superior Court (1998) 18 Cal. 4 th 1143 1161, Rptr. 2d 445 959 p 2d 752	4
Ong v. Cleland, 642 F.2d 316, 318 (9 th Cir. 1981), citing Oubichon v. North America Rockwell Corp., 482 F.2d 569, 571 (9 th Cir. 1973)	4
Ong, citing Richerson v. Jones, 572, F2.d 89, 95-96 (3 rd Cir. 1978).	4
Van Hoomissen v. Xerox Corp., 368 F. Supp 829, 833-834 (Northern DISTRICT Cal. 1973),	5
Watson v. Gulf and Western Indus., 650 F.2d 990, 993 (9 th Cir. 1981).	5
McGinest v. GTE Serv. Corp., 360 F.3d 1103, 1124 99 th Cir. 2004)	5
McGinest 360 F.3d at 1124.	5
Brooks v. City of San Mateo, 229 F.3d 917, 928 (9 th Cir. 2000).	6
Green v. Maricopa County Cmty, College Sch. Dist., 265 F. Supp. 2d (D Ariz. 2003)	6
Ray v. Henderson, 217 F.3d 1234 (9 th Cir. 2000). Brooks, 229 f3d at 928-29. Vasquez v. County of L.A. 349 F3.d 634, 641 (9 th Cir.2003)	6
Pensinger v. Bowsmith (1998 60 Cal. App. 4 th 709. 722-723, 70 Cal. Rptr. 2.d 531.	7
Stall Worth v, Shuler, 777 F.2d, 1431 (11 th Cir. 1985). Awards \$100,000 for Humiliation and emotional distress.	8
Hudson v, Reno, No. 3-92-737 (E.D. Tenn. Oct, 1994., A federal jury in Tennessee awarded \$1.5 million in compensatory damages to plaintiff for retaliation for her having filed a sex discrimination charge regarding a poor performance evaluation.	8

STATUTES AND RULES

PAGE NUMBER

42 U.S C. 2000e-3 (a) (2003)	5
411 U.S. 792	7
42 U.S.O 2000e -3(a) (2003)	12
29 U.S.C. 631 et. Seq	12

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to
review the judgment below.

OPINIONS BELOW

(x) For cases from federal courts:

The opinion of the United States court of appeals appears at
Appendix - A - to the petition and is
(x) unpublished.

The opinion of the United States district court appears at
Appendix - C - to the petition and is
(x) is unpublished.

JURISDICTION

(x) For cases from federal courts:

The date on which the United States Court of Appeals
decided my case was July 10, 2008

(x) A timely petition for rehearing was denied by the United
Court of Appeals on the following date: September 19, 2008,
and a copy of the order denying rehearing appears at
Appendix - B.

The jurisdiction of this Court is invoked under 28 U.S.C.
1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS
INVOLVED

28 U.S.C. Section 1331, 42 U.S.C., Section 1981, 1983, 7
1985.

42 U.S.C. Section 2000e-5, 42 U.S.C. Section e-5 (g)

Civil Rights Act of 1871: Section 1983, 42 U.S.C. 1983

Americans With Disabilities Act (ADA) on the "Act" 42

U.S.C, 12101-12213 Was enacted in 1990 to protect

individuals with disabilities, 42 U.S.C. 12112 (a). Mental

impairment, U.S.C. 12102 (2)(A) 29 CFR, 1630, 2 (g), EEO

compliance Manual 902.1, 29 U.S.C. 791.

STATEMENT OF THE CASE

Petitioner was employed by the United States Postal Service, Oakland Processing and Distribution Center (P&DC) from August 1965 until she was forced into involuntary retirement on August 18, 1999, because her working conditions became unbearable.

On March 21, 2003, Petitioner filed the lawsuit against The U.S. Postal Service, based on sex (female), and retaliation discrimination under Title VII of the Civil Right Act, 42 U.S.C. 200e et seq and age (DOB January 5, 1938), under the Age Discrimination in Employment Act(ADEA), 29 U.S.O 631 et seq.

On July 10, 2008, The United States Court Of Appeals for The 9th Circuit, issued its decision in this case, attached to this petition in Appendix A. For the reasons certified above, this opinion, particularly at page 2, shows it is bases on the erroneous assumption that Petitioner did not exhaust her administrative remedies with regard to a constructive termination claim.

. On July 7, 2006, The United States District Court, issue its decision in this case, after a court trial that began on April 16, 2006. See Appendix C. The Court's decision is based on the erroneous assumption that petitioner did not submit creditable evidence to support her claim of discrimination due to sex and age, only retaliation.

Mr. Griffin, Ms. Gray and Ms. Bell, discriminated Petitioner due to her age, when the Respondents treated younger female supervisors (Ms. Webb & Ms. Colbert) more favorably than Petitioner. When Ms. Gray changed Ms. Webb's Scheduled Days Off, (SDO), while denying Petitioner's request to change her (SDO s). And Mr. Griffin allowed Arlene Colbert to work on a light duty assignment, when he denied Petitioner's request for a light duty assignment. See Appendix(s), L, M & O.

The Respondents discriminated against Petitioner due to her sex, when Ms. Gray treated younger male employees more favorably than

CERTIFICATE OF COMPLIANCE

No. 07

Johnnie L. Brown

Petitioner

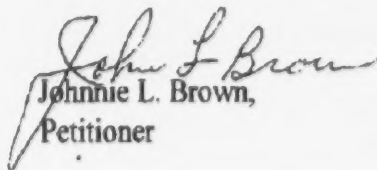
V.

John E. Potter,
Postmaster, General
United States Postal Service Respondent(s)

As are required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains, 8, 941 words, excluding the parts of the petition that are exempt by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 17, 2009


Johnnie L. Brown,
Petitioner

No. _____

06-16976

IN THE

SUPREME COURT OF THE UNITED STATES

Clerk, Washington D.C. 20543

Johnnie L. Brown

— PETITIONER

(Your Name)

VS.

John E. Potter, Postmaster General,
United States Postal Service

— RESPONDENT(S)

PROOF OF SERVICE

Johnnie L. Brown

I, _____, do swear or declare that on this date,
February 17, 2009, as required by Supreme Court Rule 29 I have
served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*
and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding
or that party's counsel, and on every other person required to be served, by depositing
an envelope containing the above documents in the United States mail properly addressed
to each of them and with first-class postage prepaid, or by delivery to a third-party
commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Katherine B. Dowling, Tracie L. Brown
United States Attorney's Office, 450 Golden Gate Avenue
San Francisco, CA 94102-3493

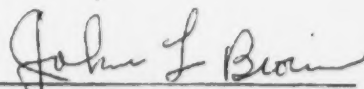
Phone #(415) 436-6833

Three (3) copies

I declare under penalty of perjury that the foregoing is true and correct.

February 17, 2009

Executed on _____, 2009


(Signature)

No. _____

06-16976

IN THE

SUPREME COURT OF THE UNITED STATES

The Clerk, Washington, D. C. 20543

Johnnie L. Brown

— PETITIONER

(Your Name)

VS.

John E. Potter, Postmaster General

— United States Postal Service

— RESPONDENT(S)

PROOF OF SERVICE

I, Johnnie L. Brown, do swear or declare that on this date, February 17, 2009, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

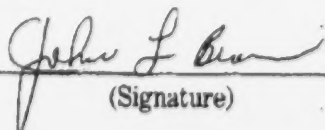
Solicitor General of The United States

Room 5614. Department of Justice,

950 Pennsylvania Ave, N.W, Washington, D.C. 20530-0001 (One (1) copy)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 17, 2009


(Signature)

No. _____

06-16976

IN THE

SUPREME COURT OF THE UNITED STATES

The Clerk, Washington, D. C. 20543

Johnnie L. Brown

— PETITIONER

(Your Name)

VS.

John E. Potter, Postmaster General

— United States Postal Service

— RESPONDENT(S)

PROOF OF SERVICE

I, Johnnie L. Brown 17, do swear or declare that on this date, February 16, 2009, as required by Supreme Court Rule 29 I have served the enclosed **MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS** and **PETITION FOR A WRIT OF CERTIORARI** on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

SUPREME COURT OF THE UNITED STATES

The Clerk, Washington, D. C. 20543

Thirty-nine (39) copies

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 17, 2009

Johnnie L. Brown
(Signature)

Petitioner, (Mr. Buckingham and Mr. Perkins). When she allowed them to use more employees to get their job done, while forcing Petitioner to work short, with fewer employees.

The Court contends that Petitioner presented no creditable evidence that Ms. Bell Ms. Gray and Mr. Griffin made any decision regarding how to assign casual employees because she filed any are all of the EEO complaints. Petitioner did in fact present creditable evidence that Mr. Griffin, Ms. Bell and Ms. Gray did in fact make their decision not only due to retaliation but also due to age and sex discrimination. See Appendix L, and Ms. Gray's Affidavit.

The March 9, 1998 EEO complaint was the only complaint filed for retaliation for filing EEO charges. Sharon Bell erroneously denied Petitioner's merit increase (lost of pay) and her EVA pay (lost of her bonus) for the year 1997. The letter warning that was issued to deny Petitioner's merit increase and bonus pay was erroneous because the letter of warning did not relate to Petitioner's performance, The letter of warning was issued for an accident and used to deny Petitioner's merit increase and EVA (bonus) pay. See Appendix S (Ex#85), EVA pay exclusion letter, EAS Performance Evaluation for FY-97, and an example copy of the productivity report during the subject period.

The Court contends that Petitioner presented no creditable evidence that Senior Manager, Distribution Operation, Acting Manager, Distribution Operations, Sharon Bell and Edna Gray provided feedback regarding her productivity because she filed any are all of the EEO complaints at issue.

Petitioner presented creditable evidence, that Ms. Bell, criticized her work without cause, Ms. Bell and Ms. Gray, repeatedly instructed petitioner to work sacks of mail only, which was discrimination against her due to her age and sex. See Appendix (s) N & O, (Ex#(s) 47, 73, & 78).

Petitioner was discriminated against due to her disability, when Mr.. Griffin allowed Arlene Colbert to work on a light duty assignment , while he denied Petitioner's request. See Appendix O, (Ex#78). Also, Petitioner suffered adverse employment action when she was assigned to work primarily sacks of mail, when she received

fewer casual employees, and when she was criticized concerning her work output. See Appendix(s) P & Q.

The FEHA prohibits an employer from failing to reasonably accommodate the known disability of an applicant or employee. The elements of a failure to accommodate claimant are similar to those of a discrimination claim under Gov. Code 12940(a), except that the plaintiff proves that he or she is a qualified individual by establishing that he or she can perform the essential functions of the position in which reassignment is sought, rather than those in the existing position.

See *Green v. State of California* (2007) 42 Cal. 4th 254, 260-267, 64 Cal. Rptr. 3d 390, 165 p.3d 118, See also, CACI No. 2540. This facts in this case is similar to Petitioner's case, because she notified the Respondent on 03-07-97 of her disability and he failed to reasonably accommodate her known disability when he refused to allow her to work on a light duty assignment. And she made him aware of her qualifications. See Appendix O.

Similarly situated younger male and female supervisors were treated more favorably, Louis Buckingham, was allowed to utilize more employees, Arlene Colbert, was allowed to work on a light duty assignment and she was not forced to work sacks of mail only, Also, Francis Webb, was allowed to change her days off repeatedly and Joe Perkin who were not similarly situated was younger and were treated more favorably, Mr. Perkins was allowed to utilize more employees. See Appendix L, & M.

An employee is entitle to relief under Title VII even absence of a formal charge, if an employer deliberately makes the working condition of an employee intolerable to the effort to induce her to quit. Petitioner presented creditable evidence that the Respondents, made her working condition intolerable and the Respondents induced her to quit. The Respondents, refused to listen when she had advised them that she was being discriminated against due to her age and sex. Simply put she advised Mr. Griffin, Sr. Manager, P & D and Bill Henderson, Postmaster General, that The

Respondents was making her life a living hell. See Appendix M.

ARGUMENT

It is clear that Petitioner apprised the EEOC that she had been off work since August 18, 1999, and in fact never returned to work due to the conditions to which she had been subjected. "When an employee seeks judicial relief for incidents not listed in the original charge to the (administrative agency), the judicial complaint nevertheless may encompass any discrimination like or reasonably related to the allegations of the (agency) charge, including new acts occurring during the pendency of the charge before the (administrative agency)." See *Ong v. Cleland*, 642 F.2d 316, 318 (9th Cir. 1981), citing *Oubichon v. North American Rockwell Corp.*, 482 F.2d 569, 571 (9th Cir. 1973). The absence of a perfect "fit" between the administrative charge and the judicial complaint is therefore not fatal to judicial review if the policies of promoting conciliation and avoiding the bypass of the administrative process have been served." *Ong*, citing *Richerson v. Jones*, 572 F.2d 89, 95-96 (3rd Cir. 1978).

The facts in this case are similar to those in *Van Hoomissen v. Xerox Corp.*, 368 F. Supp 829, 833-834 (Northern District Cal. 1973), where the Court found that when an administrative charge alleged continuous retaliation, discharge of plaintiff by a employer during the pendency of administrative proceeding could be included in a federal complaint. In the instant matter, Petitioner's constructive termination occurred during the pendency of the EEOC administrative proceedings, as it was not until 2001 that the EEOC issued its initial decision. Petitioner apprised the EEOC on October 30, 1999, that she had been continuously off work since August 18, 1999, through the present, thus giving the EEOC notice of her constructive termination.

The Ninth Circuit has held that the presence of agency negligence can not be held against a claimant. *Watson v. Gulf and Western Indus.*, 650 F.2d 990, 993 (9th Cir. 1981). Further, in *Russell v. AM Tobacco Co.*, 528 F.2d 357, 365 (4th Cir. 1975), the Court held that a Title VII complaint is not charged with commission's failure to

perform its statutory duties. Based on Petitioner's submission to the EEOC with regards to their investigation, it is clear that Petitioner did apprise the EEOC that she was no longer working, and the EEO had an obligation to investigate and should have investigated this claim. Petitioner's constructive termination claim should not be dismissed. Therefore, Petitioner, did in fact exhaust her administrative remedies See Appendix G which contains a right to sue letter, & Ex#83.

Section 704 of Title VII prohibits retaliation against an employee for opposing unlawful discrimination. *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1124 (9th Cir 2004) citing 42 U.S.C. 2000e-3(a) (2003). To establish a prima facie case of retaliation under Title VII, a plaintiff must show (1) she took action to protect her Title VII rights, (2) an adverse employment action was thereafter taken against her, and (3) a causal link exist between the two events. *McGinest* 360 F.3d at 1124.

The District Court, held that Petitioner has met the first requirement of a prima facie case, because she filed three EEOC charges, On 03-09-98, 11-18-98, and 07-08-99. The filing of a complaint with EEOC is "the quintessential action protected by 704." *McGinest*, 360 F.3d at 1124 n.19. The EEOC charges are sufficient to satisfy the first prong of a prima facie case of retaliation discrimination.

The second requirement of a prima facie case of retaliation discrimination is that the conduct, Petitioner complained of constitutes adverse employment decisions. *Green*, 265 F. Supp. 2d 1110. being forced to work "short," being instructed to work sacks of mail only, and being groundlessly criticized constitutes adverse employment actions. Petitioner has satisfied the second prong of her prima facie case.

To demonstrate a causal link between protected activity and adverse employment actions a Petitioner must "present evidence sufficient to raise the inference that her protected activity was the likely reason for the adverse action." *Cohen v. Fred Meyer, Inc.* 686 F.2d

793, 796 (9th Cir. 1982) (citations omitted). "Essential to a casual link is evidence that the employer was aware that the plaintiff had engaged in the protected activity." The District Court found, that Petitioner has established a prima facie case of retaliation discrimination with respect to being forced to work short, being instructed to work sacks of mail only, and being groundlessly criticized. Petitioner did present creditable evidence that the treatment she received (by the Respondent) at work was retaliation for filing EEOC charges. See Appendix E, The District Court's Order.

Petitioner was forced to work short, because twenty (20) employees were assigned to her unit (SPBS#1) and Petitioner was only able to utilize an average of 12 employees per day and two to three casuals. While Mr. Buckingham was allowed to use more employees. Mr. Buckingham testified, that Ms. Gray had given him at least (14) more employees than he needed.. See transcript vol. 2, page 173 (lines 21-24) and page 184 (line 1-13), See Appendix(s), O, L, R, and Edna Gray's testimony. See transcript vol.2 page 257 lines 3 & 4, lines 18 -21.

Petitioner presented creditable evidence that Ms. Gray, Ms. Bell and Mr. Griffin, discriminated against her due to her age, when Ms. Gray would not allow Petitioner to change her scheduled days off, when she treated younger males, females and Caucasian supervisors more favorably. See Appendix(s), Q & I.

Also, Petitioner presented creditable evidence that the Respondents discriminated against her, do to her sex, when the younger male supervisors were treated more favorably. Mr. Buckingham's Scheduled days Off, (SDO), were changed and he was allowed to use more employees , while Petitioner's request was denied,. Joe Perkins was also, allowed more employees. See Appendix(s), L & M.

The District Court found (In its decision on 09-15-04), that Petitioner satisfies the first required element of a prima facia case of sex and age discrimination, because she is a woman over the age of

40. Petitioner satisfies the second element, because, she was performing according to her employer's expectations. The Ninth Circuit for purposes of establishing the second requirement of a prima facie case. Aragon, 292 F.3d at 660. Therefore, the District Court finds that Petitioner has established the second required element.

The District Court also, found that "Not every employment decision amounts to an adverse employment action." *Brooks v. City of San Mateo*, 229 F.3d 917, 928 (9th Cir. 2000). Courts must examine an employer's action objectively, not subjectively, to determine whether it was adverse. *Green v. Maricopa County Cmty. College Sch. Dist.*, 265 F. Supp. 2d 1110 (D. Ariz. 2003). The Ninth Circuit has determined that the test for determining which sorts of employment decisions constitutes adverse action is whether a reasonable person, as a result of having been subjected to the decision, would be deterred from engaging in protected activity. *Ray v. Henderson*, 217 F. 3d 1234 (9th Cir. 2000). Employment decisions that nearly always constitute an adverse employment action are terminations, an undeserved negative performance review and refusal to consider a promotion. *Brooks*, 229 F. 3d at 928-29.

The Ninth Circuit's decision in *Ray*, holding that an employer's actions effectively altered the employee's ability to fulfill her duties within the same amount of time constituted adverse employment actions. Petitioner was compelled to work with fewer employees than she needed to achieve her goals, forcing her to work sacks of mail only, and criticizing her work without cause, are analogous to the employer's conduct in *Ray*. Petitioner suffered a decrease in pay when her supervisor denied her merit increase and her bonus (EVA) pay.

Also, Petitioner was hindered by her supervisors from doing her job properly. Her job was made more burdensome by her supervisor's conduct. Therefore, the District Court finds that these decisions amount to adverse actions such that Petitioner has established the third element of her prima facie case.

To establish a prima facie case of disparate treatment based on sex or age, Petitioner must provide evidence that similarly situated

employees not in her protected class were treated more favorably. McDonnell Douglas, 411 U.S. 792. Individuals are similarly situated when they "have similar jobs and display similar conduct." *Vasquez v. County of L.A.*, 349 F.3d 634, 641 (9th Cir. 2003).

Petitioner contends that similarly situated male supervisors who were younger than she, such as Mr. Buckingham, were assigned far more employees than Petitioner such that he, unlike Petitioner, were not forced to work short. and on 08-12-99, her supervisor directed her to give Buckinham her jitney, even though Petitioner "clearly needed it more than he." To satisfy the forth requirement and establish a prima facie case of discrimination, Petitioner must provide credible evidence that these employees were, treated differently, and that they were similarly situated to Petitioner.

Petitioner did, present credible evidence that Mr. Buckingham and Ms. Colbert were similarly situated supervisors, who were treated more favorably, than Petitioner. Louis Buckingham was similarly situated because, he work the same job as Petitioner, they exchanged jobs and he was assigned to the 180 unit and petitioner was assigned to SPBS#1. Mr. Buckingham was given more employees to get the job done See Appendix(s) L, (Ex#44), which explains how in, Nov 14 - 20, 1998, when Petitioner was assigned to the 180 unit, she was given two (2) casuals. The evidence verifying, when Mr. Buckingham was assigned to the 180 unit one week later, Nov. 21-27, 1998 he was given 18 casuals.

Arlene Colbert was a similar situated supervisor, because she was assigned to SPBS#4 and Petitioner was assigned to SPBS#1, which was the same job and Ms. Colbert was treated more favorably than Petitioner. See Appendix(s) L, & O, (Ex #44 & 78). And Ms. Colbert was allowed to work on a light duty assignment, while Petitioner's request was denied and, Ms. Colbert was not instructed to work sacks of mail only. Also, see Appendix(s) N, (Ex#75 and I. Tante Robinson's testimony, who has personal knowledge of the incidents. Therefore, Petitioner has satisfied the forth requirement and has establishes a prima facie case of

discrimination based on age and sex.

Also, See Appendix F, which also, contains a copy of the right to sue letter. In addition, The FEHA prohibits an employer from failing to reasonably accommodate the known disability of an applicant or employee. Mr. Griffin failed to reasonably accommodate Petitioner when he refused to allow her to work on a light duty assignment. The facts in this case are similar to, *Pensinger v. Bowsmith* (1998) 60 Cal. App. 4th 709, 722-723, 70 Cal. Rptr. 2d 531. Petitioner presented medical documentation which will prove that Mr. Nathan Griffin was aware of Petitioner's disability, beginning in 1991 to 1999. See (Ex#79-B). The 9th Circuit held that plaintiffs were not precluded from trying to prove both disparate treatment and disparate impact under ADEA and FEHA. *Mangold v. California Pub. Util. Comm'n* (9th Cir, 1995) 67 F. 3d 1470, 1476, see *E.E.O.0 v. Local 350, Plumbers and pipe fitters* (9th Cir. 1993) 998 F.2d 641, 648 f.n.2, disparate impact has been interpreted as applicable to age discrimination.

The District Court contends that prior to November 1998, SPBS#1 was primarily assigned to process, California Distribution, mail which was primarily sacks of mail. Although, SPBS#1 could and did process both sacks and pallets of mail as the work load demanded. Petitioner presented credible evidence that SPBS#1 should not have been assigned to work sacks of mail only and Edna Gray would not allow Petitioner to work pallets of mail that was often delayed in Petitioner's unit. See Ms. Robinson's declaration, Appendix I.

Lockheed Martin designer of the Small Parcel Bundle Sorter (SPBS), stated that the SPBS sorts a wide verity of small parcels and bundles of mail within the USPS processing centers. After an operator manually keys in zip codes, the induction stations automatically weighs and measures the corresponding parcel or bundle of letters and coordinates its placement on the high speed transport section of the SPBS. Each additional station boosts operating efficiency by increasing the number of parcels and bundles being sorted by the SPBS system. See Attachment #24.

In addition, Lockheed martin designer, also stated that The Small Parcel Bundle Sorter (SPBS) sorts small parcels, irregular parcel post and bundles of mail into as many as 100 separations. The SPBS is an operator- paced machine that sorts between 650 and 1000 pieces per induction station per hour. Petitioner was forced to process 1100 pieces per hour, even though the SPBS machine was not designed for that fast out put.

Petitioner made the Court aware that Edna Gray, discriminated against her do to her age, when she would not allow supervisor Arlene Colbert to work 50%, of the sacks of mail, as instructed by ,Ms. Carol miller, Plant Manager who was Mr. Griffin's supervisor. See Appendix N, (Ex#75), which verify that Ms. Miller, advised Petitioner to share the sacks of mail with, Ms. Colbert, however, Ms. Gray would not allow her to work the sacks of mail. Additional evidence of the Respondent's discriminatory treatment.

A portion of, Dr. Jeanne L. Riviore, Ph.D Psychologist, testimony regarding Petitioner's is as follows: The Respondents caused Petitioner's injuries, of stress, anxiety and depression. Petitioner attention span has been shorten, when she get frustrated, it takes her a long time to get a job done and that she have developed a permanent dissociation disorder. And that Dr. Riviore testified that, after Petitioner left the job, she has experienced several dissociation episodes.

In addition, Dr. Riviore, testified that she was aware of how Petitioner was harassed and discriminated against Petitioner, how the Respondents, caused her to work in a hostile work environment, about her socio-emotional problems by dissociating under frustration and more. See Appendix K (Ex#84). This case is a casual connection between the case of The case of Stall Worth v. Shuler, 777 F.2d, 1431 (11th Cir 1985), awarded \$100,000 for humiliation and emotional distress.

On September 15, 2004, the District Court's grants in part and denies in part defendant's motion for summary judgment.

During her tenure as supervisor, Petitioner filed five EEO complaints: one in 1994, two in 1998 and two in 1999. The disparate and retaliatory treatment to which Petitioner, was subjected caused her a great deal of emotional distress, eventually forcing her to retire five, years ahead of schedule. Petitioner's superiors took actions that effectively undermined her ability to reach the ever increasing goals set for her unit, so that she would not be disciplined or fired. This case is a casual connection between Hudson v Reno, No. 3-92-737 (E.D. Tenn. Oct 14, 1994. A federal jury in Tennessee awarded \$1.5 million in compensatory damages to the plaintiff for retaliation for her having filed a sex discrimination charge regarding a poor performance evaluation..

On 09-15-04, District Court Decision, Appendix E. The summary judgement procedures is a method for promptly disposing of actions. Petitioner's claims that was file from 1991 - 1996 was disposed of during the summary judgement.

Petitioner's processed a total of 62,688,827 or more pieces of mail during the period that Sharon bell rated unacceptable on her merit increase and denied her EVA pay. On 05-29-97 - Sharon Bell issued Petitioner a letter of warning, which was used to deny her merit increase and EVA pay. On 12-10-97, Petitioner filled an EEO complaint against Sharon Bell, relative to the letter of warning and the denial of her merit increase and EVA pay. Petitioner was off on leave when the letter was issued to her. The EEOC complaint was filed on 03-09-98.

The letter of warning was issued in error, because it did not relate to Petitioner's work performance, since, she had performed over and above the Respondents expectations. And this erroneous retaliation discrimination was used to discipline Petitioner. See Appendix S, (Ex#85).

Petitioner was off on leave when the letter of warning was issued to her, and she believed that the letter of warning would be removed. See Ex#1, which shows the EEOC complaint that was filed. The facts in this case is similar to the case of Griffins v. Cigna Corp., the

appellate court affirmed an award of \$1.2 million to a Jamaican who was fired when he complained about fellow employees harassing him. 9888 F.2d 457, 63 FEP 1205 (3rdCir 1995).

During the period of 05-98 - 12-98, Petitioner processed over one million pieces of mail. See Ex#(s) 32 & 41, which are examples of the productivity reports which, verifies that Petitioner did in fact process over one million pieces of mail daily, while she was assigned to the 180 unit, with a smaller number of employees (an average of 21 employees daily), while the other supervisors were given more employees. yet the Respondents, subjected Petitioner to continued violations of harassment.

At least one court of appeals has held that a claim for emotional distress arising out of employment is not barred when the distress was caused by an employer's illegal discriminatory practices. The facts in this case is similar to *Accardi v. Superior Court* (1993) 17 Cal. App. 4th 341, 351, 21 Cal. Rptr. 2^d 292.

The following data will verify examples of the number of pieces of mail that Petitioner process in 1998 when she was assigned to the 180 unit, working short.

(full of fear of being fired). Petitioner was working short because she was not allowed to utilize the 27 regular employees that were assigned to her unit or the 18 casuals employees that, Mr. Buckingham was allowed to use. See Ex#32, which verifies the number of employees that were assigned to Petitioner's unit (180) and Ex#44 which verifies that Mr. Buckingham was given 18 casuals for the same job and Petitioner was given 2 casuals.

Also, See Mr. Buckingham's sworn testimony, that Edna Gray had given him more employees than he needed. See transcript, volume 2, page 180, lines 3-12, he stated that he needed between 25 & 27 employees and he had been given 41 employees. which verifies that he was given 14 more employees than he need while Petitioner was working short. This information also, verifies that Ms. Gray' contention that, Mr. Buckingham need the casuals more than Petitioner was pretext. Also, will show how Ms. Gray, discriminated

against Petitioner, due to her sex, by treating younger male supervisor more favorably. See Appendix L

During the period of 01-18-98 - 10-14-98, Petitioner processed from one million to over two million pieces of mail daily, and the largest number of employees that she was allowed to utilize, was 23 and as low as 14. See Ex#32 & 40, those exhibits are only examples, and will verify that, Joe perkins was also, allowed to use as many as 95 employees, while Petitioner was only allowed to use, 10 employees to process the mail, in her unit. which is another example of how Ms. Gray, discriminated against Petitioner due to her sex. Ex#36, Joe Perkins was allowed 96 employees & Ex#39, **80 employees.**

Mr. Perkins' unit was the 044/043 unit. On 10-18-98, Ms. Bell denied Petitioner's request for personal leave, although the other supervisors, in Petitioner's unit was allowed to use personal leave. See Ex#42, which contains Ms. Bell's signed statement that the request was denied, which also, verifies that Petitioner was discriminated due to her age, since Ms Bell was favoring younger male supervisors(Mr. Buckingham) and younger females (Ms. Webb and Ms. Colbert) over Petitioner. See Tante Robinson's sworn declaration. Appendix I (Ex#82-B). Ms. Robinson was aware of how Ms. Bell, Ms. Gray and Mr. Griffin treated Petitioner.

On 11-22-98, Petitioner wrote a letter to Mr. Bill Henderson, Postmaster General, to make him aware of the continued violations of harassment, disparate treatment and the hostile work environment that Petitioner had been subjected to. The Court contends that that Bill Henderson was not the correct official to notify. However, Bill Henderson was the Postmaster General, who held the same position that John E. Potter, the Respondent now holds. Therefore, he was the correct official to notify and the notification was submitted within 45days of the EEOC charge that was filed on 11-18-98. See (Ex47). In addition, on 08-12-99, Petitioner sent a memo to Mr. Nathan Griffin notifying him of the harassment and he did not correct the problem. " The constant sexual harassment and discrimination that you are causing Petitioner to endure has become unbearable." And the

notification was submitted within 45 days of the EEOC charge that was submitted on 0708-99. See Appendix N (Ex#73)..

Petitioner's case is similar to, the case In National Railroad Passenger Corp. v. Morgan 122 S Ct. 2261 2002. The Supreme Court ruled that when a complantant alleges that a series of acts has created a hostile environment, it is treated as a single claim of unlawful employment practice, and a complaint will be timely if it is initiated within 45 days of the last action contributing to the hostile environment. In Morgan, 122 S Ct., at 2073-2077, the Court ruled as following: Hostile environment claims are different in kind from discrete acts. Their very nature involves repeated conduct. See 1 B. Lindemann & P Grossman, Employment Discrimination Law 348-349 (3d. Ed.1996). (hereafter Lindemann). ("The repeated nature of the harassment or its intensity constitutes evidence that management knew or should have known of its existence"). "The unlawful employment practice" therefore, cannot be said to occur on any particular day. It occurs over a series of days or perhaps years.

The District Court contends, that although, Petitioner suggests a hostile environment claim in paragraph 8 of her Complaint, Mr. Curtis Oler her former Attorney confirmed at oral augument that petitioner makes no claim of discrimination based on race or hostile environment. Petitioner's written documents and the continued violations of harassment, disparate treatment, and hostile work environment, that Petitioner was forced to endure, did not just go away, because her Attorney, gave the Court the wrong information. Which is why Petitioner asked the Court to take Mr. Oler of her case.

The Equal Employment Opportunity Commission has ruled in Yancey v. Secretary of State of health and Human Services, 05940301, 4355/ES (1995), when an employee makes factual allegations to the effect that he/she is being harassed to secure his/her resignation or retirement, that is sufficient to put the agency on notice of a constructive Discharge. The proper course for the agency to refer

Complainant to an EEO Counselor on the allegations of the constructive discharge. In this case the Respondents refused to do so even though Petitioner put the Respondents on notice of the hostility and the unbearable work environment. This fact is established in Appendix N, (Ex#47 & #73).

On 08-16-99, Petitioner submitted a memo to Mr. Nathan Griffin, when he came into the unit and instructed Petitioner's employees to go to the 2nd floor and manually push dollies of mail into the unit., while pallets of mail was staged in the unit that was delayed and the mail that he had instructed the employees to move from the 2nd floor was current. This is another example, of the continued harassment, disparate treatment and discrimination, abuse, petitioner was subjected to, discrimination due to her age and sex since younger, male and female supervisors, were treated more favorably, than Petitioner.

Supervisor, Colbert, was assigned to SPBS#1, and she was not instructed by Mr. Griffin, to send her employees to move the mail, nor would Mr. Griffin or Ms. Gray allow Ms. Colbert to work the sacks of loose mail. Ms. Carol Miller, had instructed Ms. Colbert to process 50%, of the sacks of mail. See Appendix N (Ex75).

The Respondents would not allow Petitioner to co-mingle the sacks and pallets of mail which would allow (Petitioner) to work the mail in color code sequence and make (her) job easier. See Ms Robinson's declaration, she has personal knowledge of mental abuse and mistreatment that the Respondents, caused Peitioner. The facts in these cases are similar to *Watson v. Department of Rehabilitation* (1989) 212 Cal. App. 3d 1271, 12861287, 261 Cal. Rtr. 204, age and race discrimination and *Menings v. Raley's Inc.* (1989) 216 Cal.App.3d.79, 91, 264 Cal. Rptr 319, sex discrimination.

Ms. Gray was aware that the sacks of mail did not contain adequate mail to work on the machine as over 90% of the mail in the sacks was loose flats and magazines. See transcript vol.2, page 257, (lines 1 & 2), Petitioner's Q. If I have pallets in my unit is that mail supposed to be processed? (line 3 & 4), Edna Gray, You can process it as a buffer

if you were - If the sacks had a lot of loose mail. yes. Although, Ms Gray knew that the sacks of mail did not contain adequate mail to be processed without a buffer, she instructed Petitioner to follow her instructions (work sacks of mail only)..

Petitioner interpreted that statement to mean, no matter how many delayed pallets you have in your unit, if I instruct you to work sacks only, you should follow my instructions because, I am in charge. See transcript, vol. 2. (lines 12-21). Also, see Appendix P (Ex#48, 49, & 69) which verifies that petitioner met and sometimes exceed her goals, (in fear of being fired), to the point of helping the employees to do their job, while she was working short. Working with fewer employees than the other supervisors.

Ms. Gray contended that Buckingham and Ms. Colbert needed the employees more because the 180 operation included the Tri-Sorter. Ms. Gray's justification are pretext., Mr, Buckingham's sworn testimony verifies that he did not need more employees. See transcript vol 2. (line 21-24)and Page 184 (line 1-13), it was established through Mr. Buckingham's testimony, Ms Gray allowed him 14 more employees than he needed on a daily basis. Petitioner was required to work short. (with a smaller number of employees than Joe Perkins, (DOB) December 27, 1947). Joe Perkins were allowed to utilize many more employees, than Petitioner was allowed, example 21, verses 95 employees that were assigned to Joe Perkin's unit. (044'043). See Ex#32 & 40, examples the large number of employees who were assigned to his unit.

Also, See Joe Perkins sworn testimony, Q. vol.2. Page 217 (lines 1-5) So on the inflated side, how many would it go up to if you had more employees placed in your unit than your regular employees? transcript, vol.2, page 217, (lines 3-6), Joe Perkins it could exceed up to 78 employees.

See also, transcript vol. 2. Page 216, (line 22) Joe Perkins' statement, originally 25. his assignment for his unit is 25, employees he stated that the number, could go up to 78, the evidence shows in Ex#40, as many as 95 employees could be assigned to his unit. With

the information that, Mr. Perkins verified, $78 - 25 = 53$, employees over his regular assignment. This information verifies that Ms Gray, discriminated against Petitioner due to her age and sex, since she treated Joe Perkins more favorably than Petitioner, he is a male supervisor who is younger.

Petitioner was required to meet the Respondents' goals with a smaller number, of employees, the goal was 1000 pieces of mail for each console, on the SPBS machine, and after a short period ,of time when the Respondents saw that Petitioner was meeting their goal of 1000, the goal was increased to 1100 pieces per console per hour. (which was very difficult for her to meet working short). And working the sacks of loose mail only.

Although, the SPBS machines were designed to process 1000 pieces per hour per console, when and if the proper mail, was processed. (small parcels and bundles). See attachment #24, which explains how the SPBS machines were designed to operate , by Lockheed Martin, the designer of the SPBS machines and Attachment #25, which shows a sample sort plan.

On 02-03-99, Ms. Bell came into Petitioner's unit, and ordered her to stop working the pallets of mail that was staged in her unit and work sacks of mail only. And she also, she groundlessly critized Petitioner, advising her to increase her hourly out put, when Petitioner had already met the goal for the day. See Appendix N (Ex#77). Petitioner was discriminated against, due to retaliation. Section 704 of Title VII of prohibits retaliation against an employee for opposing unlawful discrimination.

The facts in this case are similar to McGinest v. GTE Serv. Corp., 360 F.3d 1103, 1124 (9th Cir. 2004), citing 42 U.S.C. 2000e-3(a) (2003). On 08-12-99, Petitioner submitted a memo, to Edna Gray and Mr. Griffin, requesting that her Scheduled Days Off, (SDO) be changed, Ms. Gray denied Petitioner's request, however she allowed Mr. Buckingham and Ms. Webb to change their (SDOs), See Appendix N (Ex#73), (Ex#(s), 44, 45 & 72). .

On 08-18-99, Petitioner sustained an on the job injury, when

Petitioner became dissociated and fell, when she sustained physical injuries. See Appendix K, Ex#(s)79 & 21. Petitioner was off from 08-99 to 08-2000 without pay. Petitioner have been absent from duty due to her mental distress and emotional problems from 08-18-99 to present. and she was forced into involuntary retirement because, Petitioner had been subjected to continuing violations of harassment, disparate treatment and a hostile work environment. Petitioner, has provided evidence which shows that, a series of events occurred that constitutes harassment, which created a hostile work environment. (Petitioner is aware that her hostile work environment was disposed by the District Court) This data is submitted to explain what happened. See Appendix ,N(Ex#47 & 73). Petitioner has experienced several episodes related to her dissociation disorder, since she left her job on 08-18-99. See Appendix(s) J and K.

Also, See Dr. Gottlieb's sworn testimony, volume 3, page 341, Dr Gottlieb agreed with Dr. Riviere that "A syncopal episode or dissociation episode is caused by a single stressful situation. (lines 1-4), (lines 18-21). "If you and your supervisor had some contentious argument, and then you passed out right after that it could well be that the argument prompted you to pass out, yes. Also, verification that the argument that occurred between Petitioner and Edna Gray on 08-18-99, could have caused Petitioner to pass out under a dissociation episode. Also, the Respondents were aware of Petitioner's medical condition at the time of the incident and failed to explore and offer reasonable accommodations to Petitioner, See Appendix K. The facts in this case is similar to Gelfo v. Lockheed Martin Corp. (2006) 140 Cal. App. 4th 34, 54-62, 43 Cal. Rptr. 3d 874.

Petitioner encountered a dissociation episode, when she went to the City Of Oakland and demanded to speak to several of the higher executives, under the power of the episode in public for approximately four (4) hours. Petitioner, was unaware of how loud and disoriented that she was until an employees, told her.

Petitioner, telephoned each person, in the City of Oakland, that she had spoken to and apologized. She was ashamed to face, the City of

Oakland employees, and also, the church members for a long period of time. Petitioner has no control over when an episode, of the dissociation disorder will occur, and there is no warning of when an episode will occur. It could happen at any time when (Petitioner) encounters any situation that reminds is similar to how, she was treated by, The Respondents.

Petitioner felt that, Ms. Gray was making preperation to take disciplinary action against her. During the last few months of (Petitioner)'s employment, Mr. Griffin and Edna Gray continued to cause (her) emotional distress and to force her to work in a hostile work environment, at this point the pressure was too much for Petitioner.

Edna Gray came up to Petitioner's desk at 10;30 a.m. on 08-18-99, stating that she must go into her office for a discussion. (Petitioner was fearful of being fired) Petitioner experienced an dissociation episode and petitioner was taken of the job by ambulance to Kaiser Hospital, and she never returned back to the job. Edna Gray stated that she took of her glasses and laid them on the desk, pushed her chair back and laid on the floor. Petitioner submitted medical evidence that she was injured. See Appendix K, Ex#21.

The facts in this case are similar to *Jenson v. Wells Fargo Bank* (2000) 85 Cal. App. 4th 245,

258-259, 102 Cal. Rptr. 2d 55 (post-traumatic stress disorder can meet statutory definition of mental disability under FEHA)

Dr. Rivorie and Dr. Gottlieb verified in their sworn testimony that, when stress becomes too great, dissociation will occur as it did to Petitioner on 08-18-99 and several times later. See Appendix K, (Ex#(s) 79 & 84).

Petitioner was treated in the emergency room at Kaiser hospital on 08-18-99 and she received other treatment by Dr. Jonathan Francis, M.D. from 09-02-99 through 12-18-99. He stopped his ttreatment when the Respondents refused to pay the bill. Also Petitioner continued to be treated by Dr. Rivoire to present. See Appendix K (Ex#21), Dr. Francis's medical report and other Kaiser reports.

(Ex#84), Dr. Riviorie's medical report.

The evidence shows, that the Respondents unlawfully retaliated against Petitioner for filing EEOC charges, by discriminating against her on the basis of age and sex. The Respondents are liable, for compensatory damages, pain & suffering, lost of income, lost of wages and the medical bill that petitioner accumulated. It is unlawful for the Respondents to discriminate against Petitioner due to sex and retaliation under Title VII of the Civil Rights Act, 42 U.S.C. 2000e et. Seq. and age discrimination under the Age Discrimination in Employment Act ("ADEA"). 29 U.S.C. 631 et.seq.

The evidence shows, that a portion of Dr. Jeanne L. Riviore, Ph.D Psychologist's testimony regarding Petitioner's injuries is as follows: The Respondents caused Petitioner's injuries of stress, anxiety, and depression. Petitioner's attention span has been shorten, when she get frustrated, it takes her a long time to get the job done and that she have developed a permanent dissociation disorder. See Appendix K (Ex#84).

Dr. Rivoire testified that, after petitioner left the job she has, experience several dissociation episodes. Dr. Rivoire, also testified that she was aware, of how Petitioner was harassed and discriminated against, and how, the Respondents caused, her to work in a hostile work environment, about her socio-emotional problems, by dissociating under frustration and Dr. Riviore testified that Petitioner has some brain change, which could explain what causes her to go into a dissociation episode when she get frustrated, and more. See Appendix K (Ex#84). This case is a casual connection between Petitioner's case. In the case of Rowlett v. Anheuser Bush, Plaintiff received \$176,000 in back pay and \$300,000 in punitive Damages. Rowlett v. Anhouser Bush, 832 F.2d 294, 44, F.2d (11th Cir. 1987).

The evidence shows, that Petitioner was subjected to continuing harassment, disparate treatment and a hostile work environment. And through the discriminatory acts of abuse, Petitioner was subjected to by the Respondents, she was forced into involuntary retirement,

constitutes a constructive discharge. There are three elements to a constructive discharge claim, (1) Petitioner must show that a reasonable person in her position would have found the working condition intolerable. (2) That the conducts constituting discrimination created the intolerable working condition and (3) that the involuntary retirement was the result of the intolerable working condition. Petitioner met all three elements. Under the ADEA, employer cannot intentionally discriminate against the covered employee in favor of a younger worker, even if the younger worker is also over 40 years of age. The facts in this case is similar to *O'Connor v. Consolidated Coin Caters Corp.* (1996) 517 U.S. 308, 116 S. Ct.1307, 1309 -1310, 134L Ed.2d 433.

Mrs. Robinson stated that Ms. Brown was assigned to the (SPBS machine ,which was designed to process small parcels and bundles, also, that while she was assigned to Acting Manager Distribution Operations (AMDO), it was part of her job to have her staff dispatch bundles of magazines, flats and small parcels to Ms. Brown's unit.

Also,

Several times, Tante asked, Ms. Brown why was the delayed mail in her unit, and she was working current mail. Ms. Brown told her that she had been instructed by the Respondents, to work sacks of mail only. See Appendix I, (Ex#82-B), Ms. Robinson's testimony

The evidence is very clear that Ella Murray, a mail handler who was assigned to Petitioner's unit for two years. She, also, testified that when Petitioner fell on the job in 08-99, she went to Kaiser Hospital Emergency room with Petition. Ella stated that after Petitioner's supervisor approached her desk, she fell and sustained an injury. She testified that Petitioner was in the emergency waiting room for five hours (5) ,and her supervisors did not accompany her to the hospital, as they usually do when an employee sustains an on the job injury. See Appendix H (Ex#82-E).

The evidence is very clear that William Sutton, who was a Acting Supervisor, mails testified that, he was present in meetings and he heard the Respondents yell at Petitioner in staff meetings and that he

heard the Respondents yell at Petitioner when she requested annual leave, and he saw Petitioner crying. Mr. Sutton's testified that his testimony links to other testimony that the Respondents denied Petitioner's request for annual leave. See Exhibit(s) (Ex#30, 42) & 82-F. The evidence is very clear that Johnny Scott, Supervisor, Processing Distribution, testified that he was present in meetings and he saw and heard how the Respondents treated Petitioner and that the conduct of the supervisors has not changed to date. See Ex#82-G

When Mr. Griffin, denied petitioner's request for a light duty assignment on, March 18, 1997 he had recently been notified by Dr. Rivoire, that Petitioner, was experiencing emotional problems of anxiety and stress, from which she suffers and which were caused by her treatment, while working at her job, at the United States Postal Service. Also, when Ms. Bell rated Petitioner's merit increase unacceptable and denied her EVA pay, in error because the letter of warning that Ms. Bell used did not relate to Petitioner's performance. See Appendix S, (Ex#85) and Appendix K, (Ex#79-B). The facts in this case are similar to *Daubert v. United Postal Serv.* (10th Cir.1984) 733 #.2d 1367, 13701372 (Section 504).

The evidence is very clear that the Respondents did, in fact, cause Petitioner's injuries as described by Dr. Jeanne Riviore, and the Respondents are liable for Compensatory Damages, Pain and Suffering, Lost of Income, Lost Wages, and Medical Bills that Petitioner accumulated. The evidence is also, very clear that the Respondents did, in fact, unlawfully retaliate against Petitioner for filing EEOC charges, and age and sex discrimination, and failing to accommodate, Petitioner in regards to her physical and mental disabilities. The facts in petitioner's case is a casual connection between the Case of *Wolf v. City of Wichita* 883 at F.2d, 843, (10th Cir 1980), Awarded \$250, 000 for Wrongful Termination, Emotional Strain, Depression, Anxiety and Frustration.

DAMAGES

As a results of Respondents' Unlawful Discrimination, Petitioner Has And Will Suffer A Loss In The Amount Of : \$1,138,323.00. (One Million, One Hundred Thirty Eight Thousand, Three Hundred And Twenty Three Dollars), or more.

REASONS FOR GRANTING THE PETITION

I express a belief, based on my experienced knowledge of the case that, The United States Court Of Appeals, 9th Circuit has decided important questions of federal law that, has not been, but should be settled by this Court, or has decided important federal question in a way that conflicts with relevant decisions of the Court.

It is unlawful to discriminate against Petitioner on the basis of, Sex and retaliation discrimination under Title VII of the Civil Rights Act, 42 U.S.C, 631 et seq, and age discrimination under Age Discrimination in Employment Act ("ADEA"), 29U.S.C. 631 et seq,

One (1), Did the 9th Circuit Court of Appeals decide important questions of federal law that, has not been, but should be, settled by this Court, in ruling that no credible evidence was presented that the treatment petitioner received at work was retaliation for filing EEOC claims? Yes. (1) The U.S. District Court, in its September 15, 2004, decision, held that "Plaintiff has established a prima facie case of discrimination with respect to her claim, that Defendant unlawfully retaliated against her for EEOC activity by forcing her to work "short." by instructing her to work sacks of mail only, and by groundlessly criticizing her work." Two (2) Sharon Bell, Acting Manager Distribution Operations, denied Petitioner's merit increase and her bonus, using a letter of warning for an accident. Section 704 of Title prohibits retaliation against an employee for opposing unlawful discrimination. McGinest v. GTE Serv. Corp, 360 F.3d 1103, 1124 (9th Cir.2004)citing 42 U.S.O 200-e3(a) Also, see Appendix S (Ex#85)..

Two (2), Did the 9th Circuit Court Of Appeals err by stating that Petitioner's remaining contentions are unpersuasive? Yes. One (1), Petitioner presented evidence that the Respondents discriminated

against her due to her age, when supervisor, Louis Buckingham (DOB 09-02-48) and Francis Webb (DOB 12-22-51), was allowed to change their Scheduled Days Off (SDO), and petitioner's request was designed. Also, Supervisor, Arlene Colbert was allowed to work on a light duty assignment and Petitioner's request was denied. The aforementioned supervisors are younger than petitioner. See Appendix L, (Ex#2, 44, 45 & 72). The Age discrimination laws generally protect older individuals from discrimination in favor of younger individuals. O'Conner v. Consolidated Coin Caterers Corp. (1996) 517 U.S.308, 116 S. Ct. 1307, 1309-1310, 134L.Ed 433 (ADEA).

In addition, when the Respondents refused to accommodate, Petitioner in regards to her disabilities, since they would not allow her to work on a light duty assignment. The Americans With Disabilities Act (ADA) of 1990 42 U.S.C 12101 et seq, (disability), Section 503 and 504 of the Rehabilitation Act of 1973, and Title 42 United States Code Section 1981 (race)

Also, Two (2), Petitioner presented credible evidence verifying that she was discriminated against due to her sex, when the Respondents treated younger male supervisors more favorably, than Petitioner. Joe Perkins and Louis Buckingham was allowed to use more employees to get her job done. Buckingham was allowed to use 18, casuals, and Petitioner was allowed to use (2) and Joe Perkins was allowed 10 casuals. See Appendix(s) L & M. (Ex#44, #45 & #74), Title VII of the Civil Rights Act of 1964, prohibits discrimination due to sex 41.36, disability and medical condition 41.32, national origin, 41.33, race and color 41.34, religion 41.32 and sex 41.36, The California Fair Employment and Housing Act (FEHA), Gov. Code 12900 et seq., (race, creed color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age),

Three, (3), Did The 9th Circuit Court of Appeals decide an important question of federal law, that has not been, but should be settled by this Court in affirming that petitioner failed to

exhaust her administrative remedies, regarding age and sex discrimination? ("Brown's remaining contentions are unpersuasive).

Yes, Petitioner exhausted her administrative remedies in regards to her age and sex claim, when she filed the EEOC claim on 11-18-98 and 09-23-99. See Appendix G. (Ex#1), Title VII of the Civil Right Act, 42 U.S.C. 2000e sex female, and under the ADEA, 29 U.S.C. 631 et seq. Age and sex discrimination is prohibited.

Four, (4), Did The 9th Circuit Court of Appeals decide an important question of federal law, that has not been, but should be settled by this Court, in ruling that Petitioner did not exhaust her administrative remedies, in regards to the constructive termination claim? Yes. On page 23 of Petitioner's affidavit in support of the EEOC investigation filed October 30, 1999, See Appendix G (Ex#83). Petitioner indicated she has sustained an injury on August 18, 1999 and she has been off work ever since (ultimately never returned).

The District Court based it's ruling solely on the fact that Petitioner did not go back to EEOC to file an additional claim after leaving work on August 18, 1999. However, having put the EEOC on notice that she had already been off for more than two months should have been more than sufficient to apprise the EEOC of a need to investigate her constructive discharge claim. Also, a claim for age and sex discrimination was accepted for investigation on 09-23-99, after Petitioner left work. See Appendix G. (Ex#1).

The evidence is very clear that Petitioner was subjected to continuing harassment, disparate treatment and a hostile work environment. And through the discretionary acts of abuse, Petitioner was subjected to by the respondents, she was forced into involuntary retirement, constitutes a constructive termination.

Although, Petitioner's Attorney stated that race and hostile environment was not before the Court, this claim had been submitted in Petitioner's original clam that she filed on March 21, 2003, The Respondents conduct toward Petitioner proves hostility, and Petitioner

notified the Respondents that the working conditions had caused her live under had made her life a living hell. See Appendix N, (Ex#47 & 73. More recently, the California Supreme Court has held that labor Code Section 132a does not provide an exclusive remedy and, does not preclude an industrially employee from pursuing FEHA and common law wrongful discharge claim. The case is casual related to Petition's case, City of Moorpark v. Supreme Court (1998) 18 Cal. 4th 1143, 1161, 77 Cal. Rptr., 2d 445 959 p.2d 752.

Six (5), Did the 9th Circuit Court of Appeals decide an important federal question of federal law, that has not been, but should be settled by this court, in regards to Petitioner's total mental and physical disability that was caused by the Respondents. ("Brown's remaining contentions are unpersuasive") Yes, The Respondents were made aware of Petitioner's disability, beginning in 1992, when she began treatment by Dr. James R. Liles, M.D, Inc. Board Certified Psychiatry on 04- 29-92 through 11-05-97 and she began her treatment by Dr. Jeanne L. Rivoire, Ph.D, California Licensed Psychologist 1997 to present. The facts in this case is similar to the case of Schmidt v. Safeway Inc. (D. Or. 1994) 864 F. Supp. 991, 997, Faust v. California Portland Cement Co. (2007) 150 Cal. App. 4th 864, 887, 58 Cal. Rptr. 3d 729. Also, See Appendix K (Ex#79-B).

CONCLUSION

The Petition for a writ of certirari should be granted.
Respectfully Submitted

s/

Johnnie L. Brown,
Petitioner
January 21, 2009

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SEP 19 2008
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U.S. COURT OF
APPEALS

JOHNNIE L. BROWN,
Plaintiff-Appellant,

No. 06-16976

DC # CV-03-01248
Northern California

v.
JOHN E. POTTER,
Postmaster
General
Defendant-Appellee.

ORDER

Before: LEAVY, HAWKINS, and W. FLETCHER, Circuit
Judges.

The petition for panel rehearing filed on August 25, 2008,
is construed as including a notice of appearance for John L.
Taylor as counsel for plaintiff-appellant. The clerk shall add
John L. Taylor to the docket as counsel for
plaintiff-appellant.

The petition for panel rehearing is denied. The clerk
shall serve this order on both plaintiff-appellant and her
counsel.

No further filings will be accepted in this closed case.

Appendix B

FILED

NOT FOR PUBLICATION

JUL 10 2008
MOLLY C. DVVYER, CLERK
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS OF APPEALS
FOR THE NINTH CIRCUIT

JOHNNIE L. BROWN,
Plaintiff - Appellant,

No. 06-16976,
D.C. No.
CV-03-01248-MJJ

v.

JOHN E. POTTER,
Postmaster

MEMORANDUM'

General, Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of California
Martin J. Jenkins, District Judge, Presiding
Submitted June 18, 2008

Before: LEAVY; HAWKINS, and W. FLETCHER, Circuit
Judges. Johnnie L. Brown appeals pro se from the district
court's partial summary judgment and judgment after a bench
trial in her action alleging employment

This disposition is not appropriate for publication and
is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for
decision without oral argument. *See Fed_ R. App. P. 34(a)(2).*
/Research

discrimination and retaliation. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review summary judgment de novo. *Little v. Windermere Relocation, Inc.*, 301 F.3d 958, 966 (9th Cir. 2002). We review findings of fact after a bench trial for clear error, and conclusions of law de novo. *Lentini v. Cal. Ctr. for the Arts, Escondido*, 370 F.3d 837, 843 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment on Brown's constructive termination claim because Brown did not exhaust her administrative remedies as to that claim. *See Ong v. Cleland*, 642 F.2d 316, 318-19 (9th Cir. 1981) ("Whether a plaintiff has in fact exhausted his or her administrative remedies depends on an analysis of the fit between the administrative charges brought and investigated and the allegations of the subsequent judicial complaint.") (internal quotation marks omitted).

The district court did not err by entering judgment for defendant on Brown's retaliation claim because she presented no credible evidence that the treatment she received at work was retaliation for filing employment complaints, and no evidence that the defendant's proffered non-retaliatory reasons for its actions were pretextual. *See Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1064 (9th Cir. 2002) (Title VII retaliation claim requires a causal link between the protected activity and the adverse employment action); *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1028-29 n.6 (9th Cir. 2006) (explaining that a plaintiff cannot establish pretext by solely relying on subjective belief); *see also Equal Employment Opportunity Comm'n v. Bruno's Restaurant*, 13 F.3d 285, 289 (9th Cir. 1993) ("The district court is in the best position to judge credibility and we defer to its judgment").

We will not consider Brown's contentions regarding her claims of disparate treatment on the basis, of race and hostile work environment because Brown's counsel stipulated at the summary judgment hearing that those claims were not

before the district court_ *See Hank v. Cal. Teachers Ass 'n*, 326 F.3d 1042, 1052 (9th Cir. 2003) (issues abandoned in district court will not be considered on appeal). Further, Brown's contentions regarding her counsel's performance are unavailing because "[g]enerally, a plaintiff in a civil case has no right to effective assistance of counsel," *Nicholson v. Rushen*, 726 F.2d 1426, 1427 (9th Cir. 1985).

Brown's remaining contentions are unpersuasive_

AFFIRMED.

Appendix C

FILED

JUL 07 2006

RICHARDARD

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOHNNIE L. BROWN,)	No. C 03-1248 MJJ
Plaintiff,)	FINDINGS OF FACT AND
		CONCLUSIONS OF LAW
v.		
JOHN E. POTTER, Postmaster General,)	
United States Postal Service,)	
Defendant.)	

INTRODUCTION

After the Court's ruling on defendant's motion for summary judgment, this case was tried to the Court on plaintiff's sole remaining claim that defendant retaliated against her for filing EEO complaints in 1998 and 1999, by (1) providing Plaintiff with too few casual employees; (2) forcing plaintiff to work only sacks of mail on the machine that she supervised; and (3) unfairly criticizing plaintiff's productivity level in the tasks assigned to her. Plaintiff, Johnnie Brown appeared *Pro Se* and was assisted by Mr. James Wright. The United States Postal service was represented by Katherine B. Dowling and Tracie L. Brown, Assistant United States Attorneys. The Court heard testimony in this matter commencing on May 17, 2006, and the matter was submitted to the Court for determination on June 1, 2006.

After a review of the evidentiary record, the exhibits admitted during trial and having heard the arguments of the parties, the Court enters the following Findings of Fact and Conclusions-of Law pursuant to Federal Rules of Civil Procedure Rule 52(c).1

To the extent that any statement in the findings of fact makes any reference to the law, it shall be deemed as both a finding of fact and conclusion of law. Similarly, to the extent that any conclusion of law includes any matter of fact, it shall be deemed to have been found by the Court as both a finding of fact and conclusion of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

No. C 03-1248 MJJ

FINDINGS OF FACT

A. Factual and Credibility Findings Regarding Plaintiff's Retaliation Claim.

1. Plaintiff was employed by the United States Postal Service, Oakland Processing and Distribution Center (P&DC) from August 1965 until she left the postal service in August 2000.

2. Plaintiff was a supervisor of Distribution Operations (SDO) from 1991 until she left the Postal Service in August 2000.

3. Plaintiff filed formal EEO complaints on March 9, 1998 and September 23, 1999, alleging that the following supervisors were discriminating against her: Edna Gray, Sharon Bell, and Nathan Griffin. Edna Gray was plaintiff's immediate supervisor from approximately May to August of 1999; Gray was an Acting Manager of Distribution Operations (AMDO). Sharon Bell was plaintiff's immediate supervisor from approximately September 1997 to February of 1999; Bell was an Acting MDO. Griffin was the supervisor of Gray and Bell, a Senior Manager of Distribution Operations (SMDO). Plaintiff, Gray, Bell, and Griffin all worked on Tour 2, meaning the shift from approximately 6:30 a.m. to approximately 3:30 p.m.

4. Plaintiff's 1998 and 1999 complaints are the EEO complaints at issue in this case. Gray, Bell, and Griffin were aware of these EEO complaints.

5. From November 1998 until her departure from the postal service in August of 1999 and subsequent separation in August of 2000, Plaintiff supervised Small Parcel Bundle Sorter (SPBS) Machine #1.

6. Beginning prior to November 1998, SPBS #1 was primarily assigned to process "CALDIS" mail, which was primarily sacks of mail. However, SPBS #1 could and did process both sacks and pallets of mail as the workload demanded.

7. Plaintiff's testimony that Ms. Carol Miller, changed her assignment from primarily processing sacks of mail to processing sacks of mail 50% of the time is not credible as the change did not comport with the practice utilized to effect this type of assignment change as testified to by Mr. Griffin.

8. During the 1998-99 time frame and prior, SPBS machines other than SPBS #1 were also primarily assigned to process sacks of mail.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

No. C 03-1248MJJ

9. During the 1998-99 time frame, SPBS #4 was primarily assigned to process pallets of mail, although it also processed sacks of mail approximately three times a week as the mail volume demanded.

10. "Casual employees" are temporary workers at the P&DC; by union contract, they are limited in number. Each day, SMDO Griffin received a fixed number of casual employees for all of the distribution operations in Tour 2 at the P&DC based on considerations such as mail volume and efficiency; he assigned those casual employees to his various MDOs and AMDOs such as Gray and Bell. AMDOs Gray and Bell assigned their casual employees to various operations under their supervision, also based on considerations such as mail volume and efficiency. Casual employees were frequently shifted from the operation to which they were originally assigned to a different operation, on a daily or even hourly basis. Such shifts in casual employees' assignments were based on mail volume, as well as the needs of the various units and processing machines.

11. Even if a casual employee was assigned for record-keeping purposes to a particular operation (or "pay location"), the casual employee would not necessarily stay working in that operation or pay location on any particular day.

12. In the 1998-99 time frame, male and female SDOs supervising the SPBS machines, and supervising other operations at the P&DC frequently felt that they needed more casual employees to meet their goals, however, casualls were assigned based upon mail volume and the needs of various units processing mail.

13. Plaintiff believed that she was working short prior to filing the EEO complaints at issue.

14. Plaintiff presented no credible evidence that AMDOs Bell and Gray and SMDO Nathan Griffin made any decisions regarding how to assign casual employees because she filed any or all of the EEO complaints at issue.

15. Other SDOs supervising the SPBS machines and supervising other operations at the P&DC frequently received negative feedback from Gray and Bell regarding their work output. This feedback allowed the SDOs to meet daily productivity levels and such feedback was a part of Gray's and Bell's responsibilities as AMDOs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
No. C 03-1248 MJJ

16. Plaintiff felt that she received criticism about her work output prior to filing the EEO complaints at issue.

17. Plaintiff presented no credible evidence that AMDOs Bell and Gray and SMDO Nathan Griffin provided feedback regarding her productivity because she filed any or all of the EEO complaints at issue.

18. Plaintiff presented no credible evidence that AMDOs Bell and Gray and SMDO Nathan Griffin made any decisions regarding plaintiff's (and SPBS #1's) assignment to process primarily sacks of mail because she filed any or all of the EEO complaints at issue.

CONCLUSIONS OF LAW

1. To carry her burden, plaintiff must establish the following elements of a *prima facie* case of retaliation: (1) that she engaged in protected activity, (2) her employer subsequently subjected her to adverse employment action, and (3) there was a causal link between the protected activity and the employer's action. Bergene v. Salt River Project Agricultural Improvement and Power District, 272 F.3d 1136, 1140-1141 (9th Cir. 2001).
2. Plaintiff's EEO complaints in 1998 and 1999 constitute protected activity.
3. In order to be considered "adverse," an employment action must negatively affect pay, hours, work location, authority, responsibility, benefits or some term of employment. Kortan v. California Youth Authority, 217 F.3d 1104, 1113 (9th Cir. 2000) (finding no adverse employment action where plaintiff was not demoted, stripped of responsibilities, denied any raises, or received a reduction in salary).
4. Plaintiff presented no evidence to show that she suffered an adverse employment action when she was assigned to work primarily sacks of mail, when she received too few casual employees, and when she received feedback concerning her work output.
5. An employer's proof that similarly situated employees who had not engaged in protected activity were treated in the same manner under similar circumstances strongly suggests that no retaliation occurred. Marshall v. Shalala, 16 F. Supp. 2d 16, 22 (D.D.C. 1998)

(reorganization of plaintiff's department went resulting in changes in job assignments for all employees constituted legitimate, nondiscriminatory reason for alleged adverse job action).

6. Other supervisors who had not engaged in protected activity also worked with too few casuals, worked primarily sacks of mail and received negative feedback concerning their work output.
7. If plaintiff can assert a *prima facie* case of retaliation, the burden shifts to defendant to articulate a legitimate, non-retaliatory reason for its decision. Ray v. Henderson, 217 F. 3d 1234, 1240 (9th Cir. 2000).
8. Once the defendant articulates a justification, plaintiff bears the ultimate burden of proving that the reason was merely a pretext for a retaliatory motive. *Id.*
9. Plaintiff's evidence of pretext must be "both specific and substantial to overcome the legitimate reasons" articulated by defendant. Aragon v. Republic Silver State Disposal, Inc., 292 F. 3d 654, 659 (9th Cir. 2002).
10. Plaintiff failed to produce any evidence to show that the defendant's proffered, non retaliatory reasons for its actions were pretext.
11. It is not enough to show that the proffered justification turned out to be wrong, as long as the employer honestly believed its reasons for its actions. Villiarimo v. Aloha Island Air, Co., 281 F. 3d 1054, 1063 (9th Cir. 2002).
12. Plaintiff's subjective belief that the adverse action was motivated by discrimination is not sufficient. Rodriguez v. International Business Machines, 960 F. Supp. 227, 231 (N.D. Cal. 1997).
13. SMDO Griffin, MDO Gray, and Acting MDO Bell made decisions as to what type of mail SPBS #1 should process, where casual employees were assigned, and when to give negative feedback regarding work output based not upon retaliatory motives, but based on legitimate business needs: i.e., efficiency, mail volume, and legitimate productivity concerns.

14. Plaintiff did not prove anything more than her own subjective belief that Griffin, Gray, and Bell were retaliating against her for her protected activity.
15. The Clerk shall close the file.

²The Court reserved ruling on the question of damages and, as such, took under submission defendant's objections to plaintiff's exhibits, deposition testimony and other evidence relevant to the issue of damages. Given the Court's finding with respect to the liability phase of the trial, the issue of damages is moot.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
No. C 03-1248 MJJ

Appendix D

Pending before the Court are Plaintiff Johnnie L. Brown's Motion for a New Trial and Motion to Amend Findings of Fact and Conclusions of Law. The Court has thoroughly reviewed Plaintiffs Motions and considered the arguments she has presented in support of a new trial and/or amending the Court's Findings and Conclusions. However, the Court finds no meritorious grounds either warranting a new trial in this case or causing the Court to amend its Findings of Fact and Conclusions of Law. Accordingly, the Court **DENIES** Plaintiff's Motions. **IT IS SO ORDERED.**

Dated 9/15/2006

s/
Martin J. Jerkins
United States District Judge

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 19, 2006, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Johnnie L. Brown
4805 Walnut Street
Oakland, Ca 94619

Katherine Burke Dowling
United States Attorney's Office
450 Golden Gate Avenue
Box 36055
San Francisco, CA 94102-3495

Tracie L. Brown
U.S. Attorney's Office
450 Golden Gate Ave. 10th Fl.

s/
Richard W. Wieking, Clerk
By: Monica Tutson, Deputy Clerk

Pending before the Court are Plaintiff Johnnie L. Brown's Motion for a New Trial and M to Amend Findings of Fact and Conclusions of Law. The Court has thoroughly reviewed Plaintiff's Motions and considered the arguments she has presented in support of a new trial and/or amendir Court's Findings and Conclusions. However, the Court finds no meritorious grounds either warra a new trial in this case or causing the Court to amend its Findings of Fact and Conclusions of Accordingly, the Court **DENIES** Plaintiff's Motions.

IT IS SO ORDERED.

Dated 9/15/2006

s/
Martin J. Jerkins
United States District Judge

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 19, 2006, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

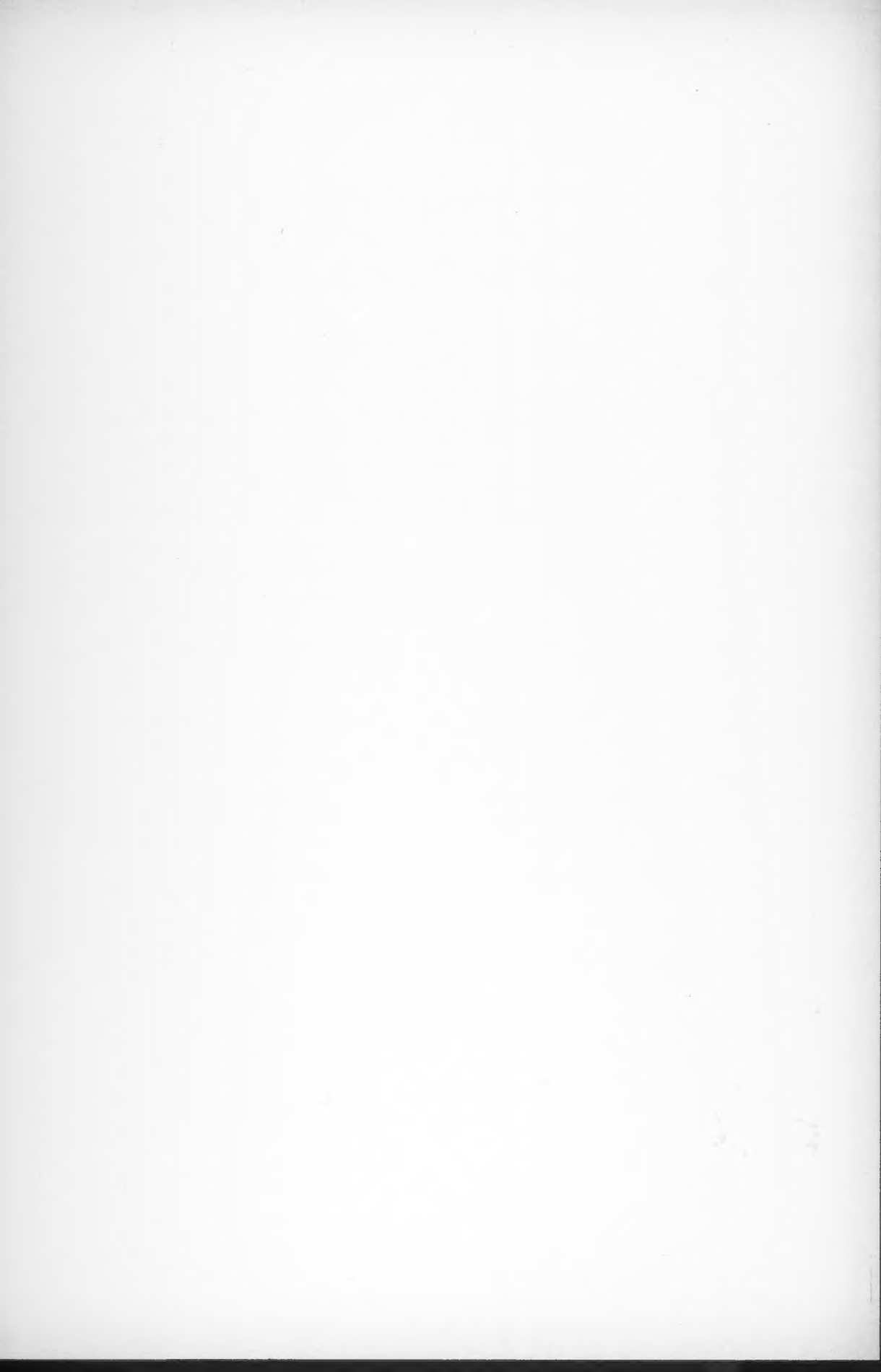
Johnnie L. Brown
4851 Walnut Street
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Katherine Burke Dowling
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450 Golden Gate Avenue.
Box 36055
San Francisco, CA 94102-3495

Tracie L. Brown
U.S. Attorney's Office
450 Golden Gate Ave. 10th Fl.
San Francisco, CA 94102

Dated: September 19, 2006

s/
Richard W. Wieking, Clerk
By: Monica Tutson, Deputy Clerk



Appendix E

INTRODUCTION

Before the Court is Defendant's Motion for Summary Judgment ("Motion"). For the following reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Defendant's Motion for Summary Judgment.

FACTUAL BACKGROUND

Plaintiff Johnnie Brown ("Plaintiff"), a woman, was born on January 5, 1938. (Declaration of Johnnie Brown ("Brown Decl.") at ¶ 2.) She was employed at the U.S. Postal Service's processing and distribution facility in Oakland, California from August 1965 through August 2000. (Brown Decl. at 3-4.) In 1991, Plaintiff was promoted to the position of supervisor. (*Id.* at ¶ 3.) As such, Plaintiff supervised clerks who distributed the mail. (Agreed Statement of Facts at III.) Plaintiff retired from the Postal Service in August 2000. (*Id.* at 2.)

In March 2003, Plaintiff filed the instant lawsuit against the U.S. Postal Service alleging s

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and retaliation discrimination' under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq.*, and age discrimination under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 631 *et seq.* Plaintiff alleges that beginning in 1991, when she became a supervisor, and continuing until her abrupt departure from duty in 1999,² her superiors treated her in a way that was discriminatory on the bases of age, sex, and retaliation. Plaintiff claims sex and age discrimination because she alleges that other similarly situated supervisors, who were male or younger than Plaintiff or both, were not subjected to the same maltreatment. Plaintiff alleges that her EEOC activity and other less formal complaints she made throughout her tenure regarding her supervisors' mistreatment of and discrimination against her prompted the retaliation discrimination. (During her tenure as supervisor, Plaintiff filed four EEOC complaints: one in 1994, two in 1998, and one in 1999.) Plaintiff claims that the disparate and retaliatory treatment to which she was subjected caused her great emotional distress, eventually forcing her to retire five years ahead of schedule.

More specifically, Plaintiff alleges that her superiors took actions that effectively undermined Plaintiff's ability to reach the ever-increasing goals set for her unit so that she would be disciplined or fired.³ Plaintiff alleges that throughout her tenure as supervisor, including specific instances in 1998 and 1999, Plaintiff's superiors regularly caused her to work "short" (with a smaller number of employees than needed) while other units were assigned ample employees to reach their goals. (Brown Decl. at ¶ 9-12, 26.) Plaintiff also alleges that in 1998, her superiors repeatedly instructed her to have her unit work sacks of mail only, even though Plaintiff's unit was assigned to use the Small Parcel Bundle Sorter ("SPBS") which cannot be used for processing most of the types of mail contained in sacks. (Brown Decl. at ¶ 9, 12.) Additionally, Plaintiff alleges that on September 4,

¹ Plaintiff additionally buries what appears to be a claim of race discrimination in paragraph 8 of her Complaint. She also suggests a hostile environment claim in paragraphs 5 and 6 of her Complaint. Neither party acknowledged these claims in their briefs and Plaintiff's counsel confirmed at oral argument that Plaintiff makes no claims of discrimination based on race or hostile environment. The Court therefore regards Plaintiff's Complaint as alleging only sex and retaliation discrimination under Title VII.

² Plaintiff was absent from duty without pay from August 18, 1999 until August 2000, when she retired.

³ Plaintiff does not report failing to meet her goals, being disciplined for not meeting her goals, or being fired.

1996, one of Plaintiff's superiors instructed Plaintiff to violate postal regulations. (Brown Decl. at 24.)

Plaintiff additionally alleges that her superiors treated her poorly and harassed her as compared with other supervisors (many of whom were women but all of whom were younger than Plaintiff) even though Plaintiff (and Plaintiff's unit) performed above requirements and processed more mail than the other supervisors' units. Specifically, Plaintiff claims that throughout her tenure as supervisor, her supervisors groundlessly criticized her work and verbally harassed her by yelling at her, often in front of other supervisors and the subordinate employees assigned to Plaintiff's unit. (Brown Decl. at ¶ 13.) She alleges that some of this groundless criticism was inflicted upon her in 1999. (Id.) Plaintiff alleges that her supervisors frequently held meetings with the employees assigned to Plaintiff's unit to assess Plaintiff's skills as a supervisor and that they refused to support Plaintiff in her supervisory role (after Plaintiff had issued a letter of discipline to one of her employees and the employee complained) thereby undermining Plaintiff's employees' respect for Plaintiff. (Complaint at 12, 15.) She alleges that her supervisors denied or ignored her requests for annual leave, personal leave, and for a change in scheduled days off, including two instances in 1998 (Brown Decl. at 22, 25; Complaint at 8). She also alleges that her requests for light duty assignments, for evaluations, for meetings with her supervisors, and to have a union representative present for meetings with supervisors were regularly denied or ignored. (Brown Decl. at r 14, 34, 35.) Plaintiff alleges that in 1996, her supervisors instructed her not to sit at her desk and then threw out her desk (which contained Plaintiff's personal effects). (Brown Decl. at ¶ 9.) Plaintiff also claims that her supervisors improperly gave her a letter of warning in April 1997 for failing to report an accident. (Brown Decl. at 15.)

Plaintiff additionally claims that her superiors reassigned her to other less desirable units, and in 1997 gave her an "unacceptable" rating which led to the denial of a merit increase and bonus pay. (Brown Decl. at 6, 15-17, 21, 29-33, 41.) Plaintiff claims that her rating was based on her off-duty status during portions of 1997 and on a letter of warning Plaintiff was issued for failing to report an accident. Plaintiff claims that she should not have been penalized for being off duty

because she was on-leave due to a work-related injury and because she was covered by the Family and Medical Leave Act which protects employees from "any disciplinary action resulting solely from the absence." (Brown Decl. at 15-17.) Plaintiff alleges that the letter of warning should not have been used to deny her merit increase and bonus pay because it was unrelated to performance. (Brown Decl. at 15.) Plaintiff claims that she performed over and above her supervisors' expectations, had never received any form of disciplinary action, and that similarly situated male or younger supervisors who performed less well were not denied their merit increase or bonus. (Brown Decl. 11 5,17-21.)

Plaintiff also alleges that throughout her tenure as a supervisor, Plaintiffs written requests to speak with her superiors regarding her concerns about working "short" and about her perceived harassment were ignored or denied. She also claims that she received no assistance despite her written requests to her union representative, to the District Manager for Customer Service and Sales, and to Postmaster General William Henderson regarding the problems she was encountering. (Brown Decl. at 11 27, 34-36.) Plaintiff claims that all of this alleged conduct was based on sex and age discrimination and on retaliation against her for complaining, formally and informally, about the way she was treated. (Brown Decl. at ¶ 28.)

Plaintiff claims that on August 18, 1999, on her way to a meeting at work, Plaintiff lost consciousness due to mental distress caused by her work environment and was taken to the hospital. She did not return to work and was absent from duty without pay until August 2000 when she retired. (Brown Decl. at 11 8, 27; Complaint at 8, 24 [sic].)

Plaintiff claims that she has suffered mental distress (manifested in "blackouts," in which Plaintiff becomes disoriented and out of control and begins yelling at those around her, and the inability to sleep, eat, or hold down a job) and financial loss (for the denial of a merit increase and bonus in 1997 and for being constructively terminated).

In 1995, Plaintiff brought suit against the U.S. Postal Service in the U.S. District Court for the Northern District of California for Intentional Infliction of Emotional Distress ("BED"). Judge Smith initially dismissed Plaintiff's complaint on the grounds that it was preempted by the Federal Employees Compensation Act ("FECA"),

the workers' compensation statute for federal employees. Because emotional distress claims are outside the scope of FECA, Judge Smith determined that Plaintiff would have to proceed under the Federal Tort Claims Act ("FTCA") which required the exhaustion of administrative remedies first. Accordingly, the Court administratively closed the file while Plaintiff pursued her administrative remedies. When Plaintiff's administrative claim was denied, the Court re-opened the case but granted summary judgment in favor of Defendant on the grounds that Plaintiff's emotional distress claims under the FTCA were preempted by the exclusive remedy provisions of California's workers' compensation law. Judge Smith found that Plaintiff's claimed injuries, which were purely emotional, were compensable under California's workers' compensation law and therefore could not be the subject of a lawsuit.

In Plaintiffs earlier complaint, Plaintiff made substantially the same factual allegations as in her present Complaint. There appear to be only three new areas of factual allegations. First, Plaintiff now alleges that her supervisors instructed her unit to work sacks of mail only, even though Plaintiffs unit was assigned to use the Small Parcel Bundle Sorter ("SPBS") which cannot be used for processing most of the types of mail contained in sacks, undermining Plaintiffs ability to reach the goals set for her. (Brown Decl. at 1119, 12.) Second, Plaintiff now claims that she was improperly given a rating of "unacceptable" which led to the improper denial of merit pay and a bonus in 1997. (Brown Decl. at 15.) Plaintiff also now alleges a more concrete injury as a consequence of the alleged mistreatment. She claims that she was constructively forced to retire long before she had intended to due to the mental distress she suffered as the result of her mistreatment at work. (Brown Decl., ¶ 27; Complaint at page 8, 1124 [sic].) She claims that after August 1999, she was unable to work at the Postal Service or anywhere else. (Id.)

LEGAL STANDARD

The summary judgment procedure is a method for promptly disposing of actions. *See* Fed. R. Civ. Proc. 56. The judgment sought will be granted if "there is no genuine issue as to any material fact and [] the moving party is entitled to judgment as a matter of law." Fed. R. Civ. Proc 56(c).

Although Plaintiffs initial complaint was filed in 1995, she filed a "Motion for a Trial" on January 12, 1998 which appears to have been treated by Judge Smith as an amended complaint. Judge Smith's Order granting summary judgment alludes to facts included in Plaintiff's "Motion for a Trial" that were not (and could not have been) included in Plaintiff's original 1995 complaint (e.g. regarding 1996 conduct). Therefore, this Court also regards Plaintiffs Motion for a New Trial as an amended complaint. Throughout this memorandum, this Motion will be referred to as "1998 Motion for a Trial."

"[A] moving party without the ultimate burden of persuasion at trial [] may carry its initial burden of production by either of two methods. The moving party may produce evidence negating an essential element of the nonmoving party's case, or, after suitable discovery, the moving party may show that the nonmoving party does not have enough evidence of an essential element of its claim or defense to carry its ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies*, 210 F.3d 1099, 1102 (9th Cir. 2000). If the movant meets its burden, the nonmoving party must come forward with specific facts demonstrating a genuine factual issue for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

If the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial, "the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In opposing summary judgment, the nonmoving party may not rest on his pleadings. He "must produce at least some 'significant probative evidence tending to support the complaint.'" *T. W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987) (quoting *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 290 (1968)).

The Court does not make credibility determinations with respect to evidence offered, and is required to draw all inferences in the light most favorable to the non-moving party. See *T. W. Elec. Serv., Inc.*, 809 F.2d at 630-31 (citing *Matsushita*, 475 U.S. at 587). Summary judgment is therefore not appropriate "where contradictory inferences may reasonably be drawn from undisputed evidentiary facts .. ." *Hollingsworth Solderless Terminal Co. v. Turley*, 622 F.2d 1324, 1335 (9th Cir. 1980).

ANALYSIS

I. Res Judicata

Defendant argues that Plaintiff's present complaint is barred by the doctrine of *res judicata*. (Defendant's Motion for Summary Judgment ("Motion") at 13-15.) *Res judicata*, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in a prior action. *Western Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997). *Res judicata* applies whenever there is (1) identity of claims between the earlier action and the present action; (2) identity or

privity between the parties, and (3) a final judgment on the merits in the earlier action. As explained more fully below, Plaintiffs claims are not barred *by res judicata* because, although Plaintiffs two lawsuits allege many of the same facts against the same party, summary judgment in Plaintiffs earlier action did not operate as a final judgment on the merits.

A. Identity of Claims

In a *res judicata* analysis, the Court must first examine whether there is an identity of claims between those raised in the present action and those raised in the earlier action. "The central criterion in determining whether there is an identity of claims between the first and second adjudications is 'whether the two suits arise out of the same transactional nucleus of facts.'" *Frank v. United Airlines, Inc.*, 216 F.3d 845, 851 (9th Cir. 2000) (citation omitted). Here, Defendant argues that there is identity of claims because Plaintiff relies on the same nucleus of operative facts in the instant action that she relied on in her previous case. Plaintiff disagrees. Plaintiff contends that her present Complaint relates to Defendant's continuing conduct, some of which occurred after the filing and disposition of the previous action.

The factual basis upon which Plaintiff brought her recent complaint is nearly identical to the factual basis on which she brought her earlier complaint. In the two actions, Plaintiff complains of much of the same mistreatment by her supervisors, albeit under different legal theories. For example, in both complaints, Plaintiff claims that one of her superiors instructed her to violate postal regulations. (Brown Decl. at ¶ 24; 1998 Motion for a Trial at 12.) Plaintiff also claims, in both actions, that her supervisors held meetings with employees assigned to Plaintiffs unit to evaluate Plaintiff. (Complaint at 12; 1998 Motion for a Trial at 3-5, 8-10.) Additionally, Plaintiff alleged in both lawsuits that one of her supervisors instructed her not to sit at her desk and then bad her desk, containing Plaintiffs personal effects, thrown away. (Brown Decl. at ¶ 9; 1998 Motion for a Trial at 12.) The facts alleged in Plaintiffs earlier action against the Postal Service and her present action are, in many ways, identical.

Plaintiff argues that even if the facts upon which Plaintiff brings this second suit are similar to those upon which she brought her earlier "ill-advised" action, there is still no identity of claims because the cause of action in the first case was the intentional

infliction of emotional distress whereas here, the legal issue is discrimination. (Opposition at 21.) Defendant argues that although the legal theories in the two cases are distinct, Plaintiff could have alleged discrimination in her earlier action but failed to do so and that this does not extinguish an identity of claims. Defendant is correct. While the legal causes of action in the two cases differ, this difference does not matter if the two suits arise out of the same nucleus of facts. "Newly articulated claims based on the same nucleus of facts may still be subject to a *res judicata* finding if the claims could have been brought in the earlier action." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064 (9th Cir. 2003). Here, as discussed above, Plaintiff's complaint with respect to alleged facts occurring before January 12, 1998 is based nearly entirely on the same nucleus of facts as her previous complaint. Because Plaintiff alleges the same conduct on Defendant's part in both actions, she could have raised age, sex, and retaliation discrimination in her earlier complaint. Nothing would have prevented Plaintiff from raising discrimination claims in her earlier complaint as to the pre-1998 factual predicate. Therefore, as to the claims based on alleged conduct occurring before January 12, 1998, the Court finds that the first prong of the *res judicata* inquiry, identity of claims, is met.

However, Plaintiff now alleges conduct that she did not (and, in most cases, could not) have alleged in her earlier complaint. Judgment' in a prior case "cannot be given the effect of extinguishing claims which did not even then exist and which could not possibly have been sued upon in the previous case." *Frank*, 216 F.3d at 851 (citation omitted). That the later conduct arises out of a continuing course of conduct that provided the basis for the earlier claims is of no consequence and does not function to bar raising the new claim. *See id.*

Here, the Court must consider each new factual allegation that was not raised in the earlier complaint. First, Plaintiff now claims that in 1997, her merit increase and bonus were improperly denied. In January of 1998, when Plaintiff filed her Motion for a Trial (treated as an amended complaint), the alleged conduct had already occurred but Plaintiff had not yet exhausted her administrative remedies (nor could she have) with respect to that personnel decision. (Brown Deal).

¶ Whether or not Judge Smith's Order granting Defendant's motion for summary judgment in Plaintiff's earlier case amounts to final judgment is discussed *infra*.

30, Ex. 43.) Title VII requires a plaintiff to exhaust her administrative remedies by filing a timely charge with the Equal Employment Opportunity Commission (EEOC) before filing a lawsuit; if the plaintiff's administrative remedies are not exhausted, the plaintiff cannot establish subject matter jurisdiction. *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1099 (9th Cir. 2002). Plaintiff had initiated the EEOC process, but an investigation was pending and Plaintiff had not yet been issued a right-to-sue letter. Therefore, Plaintiff could not have included any allegations of discrimination regarding the denial of a merit increase and bonus in her previous lawsuit. Plaintiff's claims as to that alleged employment action are not barred by *res judicata*.

Second, as part of the allegation regarding the denial of a merit increase and bonus pay described above, Plaintiff now claims that the April 1997 letter of warning she received for the failure to report an accident (which was cited by Defendant as one of the bases for the denial) was improper. (Brown Decl., 15.) Because this alleged conduct occurred in 1997, long before Plaintiff filed her Motion for a Trial (which contained many allegations of conduct that occurred in 1996 and 1997 (after she had first filed her lawsuit)), Plaintiff's claims with respect to this conduct could have been raised in her earlier complaint and thus are subject to the *res judicata* bar (assuming the other requirements are met).

Third, Plaintiff makes several allegations regarding conduct specifically occurring in 1998 and 1999 that is similar to conduct she alleged in her earlier complaint. For example, Plaintiff claims that throughout 1998, she was compelled by her supervisors to work without an adequate number of employees while other supervisors were not. (Brown Decl., 10-12.) She also alleges that during 1998 and 1999, her supervisors groundlessly criticized her work. (Brown Decl., ¶ 13.) Plaintiff additionally claims that in 1998, she was denied a request to change her scheduled days off and that another time that same year, her request for personal leave was denied. (Brown Decl., 8, 25.) Plaintiff also claims that on August 19, 1999, one of Plaintiff's supervisors refused to allow her to have a NAPS representative present at a meeting. (Brown Decl., 14.) Although Plaintiff alleged conduct similar to each of these alleged instances of mistreatment in her prior complaint, because she could not have alleged the 1998 and 1999 conduct, there is no identity of claims and thus, no *res judicata*.

Fourth, Plaintiff now alleges that in 1998, she was repeatedly instructed to work sacks of mail, even though the SPBS machine used by her unit could not process 90% of the mail contained in the sacks. She also alleges that she was constructively terminated when she was forced to leave work in August 1999 from the mental distress caused by her work environment and ultimately to retire the following August, five years earlier than she had planned. (Brown Decl. at II(8, 27.) Plaintiff could not have brought claims, based on any legal theory, for alleged conduct that occurred in 1998, 1999, or 2000 in her January 1998 complaint. Thus, there is no identity of claims as to these factual allegations and neither is barred by *res judicata*.

Therefore, as to the claims relevant to alleged conduct that occurred before January 12, 1998, except the 1997 denial of a merit increase and bonus, there is identity of claims between Plaintiff's earlier complaint and her present complaint because Plaintiff *could* have raised discrimination claims regarding that alleged conduct in her earlier complaint. There is no identity of claims, however, and thus no bar under the doctrine of *res judicata*, as to all claims based on alleged conduct that took place after January 12, 1998 or based on conduct that could not have been raised in the January 12, 1998 Motion for a Trial.

B. Identity or Privity Between the Parties

The second element required to find that a claim is barred by *res judicata* is that the parties in the earlier action are the same as the parties in the present action. In Plaintiff's earlier action, in 1995, Plaintiff Johnnie Brown brought suit against the United States Postal Service. In the current action, the same plaintiff; Johnnie Brown, brings suit against John E. Potter ("Potter"), Postmaster General of the United States Postal Service. Identity or privity of defendants in the suits exists here because Plaintiff has brought claims against the same agency of the U.S. government. Naming Potter does not alter this result because he is sued in his official capacity as Postmaster General. 18A Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, *Federal Practice and Procedure: Jurisdiction* § 4458 (2d ed. 2002).

C. Final Judgment on the Merits

The third prong of the *res judicata* analysis examines whether or not there was a final judgment on the merits in the first action. *Frank*, 216 F.3d at 850. If there is no final judgment on the merits, the doctrine of *res judicata* does not apply and the claims are not precluded. It is well-established that "for the purposes of *res judicata*,

summary judgment is considered a final judgment on the merits." *Fund for Animals, Inc. v. Lujan*, 962 F.2d 1391, 1398 (9th Cir. 1992). However, where, in the prior decision, summary judgment was "a judgment that actually rested on such matters of abatement as lack of jurisdiction, improper venue, or failure to join required parties, or that rested on an evaluation of the pleadings," summary judgment may not constitute final judgment on the merits for *res judicata* purposes. 18A Wright, Miller, & Cooper, *Federal Practice and Procedure: Jurisdiction* § 4444. "Although such decisions may be styled summary judgments, they should not gain increased preclusive effects because of the label chosen." *Id.* In the case at bar, the Court must determine whether the 1998 order granting summary judgment in favor of Defendant on preemption grounds constitutes a final judgment on the merits such that her current claims would be barred by *res judicata*.⁶

Judge Smith's 1998 order granted summary judgment on the grounds that Plaintiff's IIED claim under the FTCA was preempted by California's workers' compensation law. It is well settled that dismissal for lack of subject-matter jurisdiction does not preclude a second action on the same claim. *Hughes v. United States*, 71 U.S. 232 (1866). Although Judge Smith's order finding preemption occurred in the context of a Rule 56 motion instead of a Rule 12 motion, the order cannot be mechanically viewed as effecting a final judgment on the merits for purposes of claim preclusion.

In his briefs, Defendant argues that Judge Smith's 1998 order operates as an adjudication on the merits even if the stated reason for the judgment was preemption.⁷ The Court disagrees. Although Judge Smith commented on the sufficiency of Plaintiff's evidence in the earlier case, she expressly held that her Order did not reach the issue of whether Plaintiff had met her evidentiary

The Court has already determined that the first required element of *res judicata*, identity of claims, was not met as to conduct alleged in the present Complaint that could not have been raised in Plaintiff's previous action. Therefore, those claims are not considered here, for even if Judge Smith's 1998 Order were found to be a final judgment on the merits, it would not apply to those particular claims.

Defense counsel admitted at oral argument, however, that there was "a gray area" as to whether Judge Smith had, in fact, made a determination on the merits.

burden. (Order at 6 n.1.) Therefore, the Court finds that Judge Smith's May 1998 order granting summary judgment did not serve as a final judgment on the merits for *res judicata* purposes. Having failed to establish the third requirement in the *res judicata* analysis, Defendant's contention that Plaintiff's claims are barred by *res judicata* is without merit.

II. Failure to Exhaust Administrative Remedies

Title VII, the statute under which Plaintiff brings suit against Defendant for sex and retaliation discrimination, requires that a Plaintiff exhaust her administrative remedies by filing a charge with the EEOC before filing a lawsuit. B.K.B., 276 F.3d at 1099. A plaintiff who fails to exhaust her administrative remedies cannot establish subject matter jurisdiction. *Id.*

To determine whether a Title VII Plaintiff has exhausted her administrative remedies, courts examine "the fit between the administrative charges brought and investigated and the allegations in the subsequent judicial complaint." *Ong v. Cleland*, 642 F.2d 316, 318 (9th Cir. 1981). If the claims made in the lawsuit are "like or reasonably related to" those listed in the EEOC charge, the Plaintiff is deemed to have exhausted her administrative remedies as to those incidents such that she may seek judicial relief. *Id.* "The absence of a perfect fit between the administrative charge and the judicial complaint is . . . not fatal to judicial review if the policies of promoting conciliation and avoiding bypass of the administrative process have been served." *Id.* at 319. "The substance of the administrative charge, rather than its label, is the concern of Title VII." *Id.* (citation omitted). However, where the EEOC charge fails to put the administrative agency on notice regarding the discriminatory conduct alleged in a federal lawsuit and the EEOC has, as a result, been unable to investigate those allegations, administrative remedies are deemed not exhausted. *Shah v. Mt. Zion Hospital and Medical Center*, 642 F.2d 268 (9th Cir. 1981) (affirming a district court's dismissal, for failure to exhaust administrative remedies, on the ground that the plaintiff's EEOC charge claiming sex and national origin discrimination only did not serve to exhaust the plaintiff's administrative remedies with respect to claims, in a judicial context, of race, color, and religious discrimination). To find otherwise would "circumvent the Title VII scheme which contemplates agency efforts to secure voluntary compliance before a civil action is instituted." *Ong*, 642 F.2d at 319

(citations omitted).

Defendant argues that like Title VII plaintiffs, plaintiffs claiming age discrimination under the ADEA must exhaust their administrative remedies before filing suit. This is not strictly true. See e.g. *Bankston v. White*, 345 F.3d 768, 770 (9th Cir. 2003) (citing *Stevens v. Dep't of Treasury*, 500 U.S. 1 (1991)). Plaintiffs alleging age discrimination under the ADEA are not required to exhaust administrative remedies in the way that Title VII plaintiffs are; however, they do have an affirmative duty to give the EEOC notice of their intent to sue based on age discrimination at least 30 days before filing suit. *Id.* Filing an EEOC charge for age discrimination satisfies this duty. *Id.*

Defendant makes two arguments regarding Plaintiff's alleged failure to exhaust her administrative remedies. First, Defendant contends that Plaintiff raises "myriad incidents and allegations" in her complaint that are beyond the scope of her EEOC complaints. (Motion at 12; Reply at 8.) Second, Defendant argues that Plaintiff's allegation regarding the denial of a merit increase and bonus in 1997 is barred because the administrative remedies she sought were untimely. The Court addresses each of these arguments in turn.

A. Some Allegations Are Beyond the Scope of Plaintiff's EEOC Complaints

In the case at bar, Plaintiff's counsel clarified at oral argument that Plaintiff was only claiming discrimination as to those alleged actions taken by Defendant on or after December 10, 1997. Therefore, the Court's analysis with respect to the exhaustion of administrative remedies is limited to the alleged conduct that occurred on or after December 10, 1997 as follows:

- on December 10, 1997, Plaintiff's supervisor advised Plaintiff that she would not receive a merit increase or bonus for that year;
- throughout 1998, Plaintiff's supervisors compelled her to work with an adequate number of employees;
- in 1998 and 1999, Plaintiff's supervisors groundlessly criticized her work;
- in 1998, Plaintiff was denied a request for personal leave and a request for a change in her scheduled days off;
- on August 9, 1999, one of Plaintiff's supervisors refused to allow her to have a Union representative present at a meeting;

- in 1998, Plaintiff was repeatedly instructed to work sacks of mail, even though the Small Parcel Bundle Sorter which her unit used could not process 90% of the mail contained in the sacks of mail; and
- in August 1999, Plaintiff was constructively terminated when she had to leave work because of the mental distress caused by her work environment, and was then absent from duty without pay until August 2000 when she retired, five years earlier than she had planned.

With respect to Defendant's contention that these allegations are beyond the scope of her EEOC complaints, the Court agrees in part and disagrees in part and addresses individually each of the above-listed allegations that are still in play.

i. Denial of Merit Increase and Bonus

Plaintiff alleges that on December 10, 1997, she learned that Defendant had decided that she would not be receiving a merit increase or a bonus for that year. To the extent that Plaintiff now claims retaliation discrimination as the unlawful basis for that alleged employer action, Plaintiff has exhausted her administrative remedies. Plaintiff filed an EEOC charge on March 9, 1998 in which she complained that supervisors Sharon Bell and Nathan Griffin had, as retaliation against Plaintiff, improperly determined that she would not be awarded a merit increase and bonus for 1997. (Brown Decl. at ¶ 30, Ex. 43.) This claim is properly before the Court.

However, to the extent that Plaintiff now claims that sex discrimination was the unlawful basis for that alleged employer action, Plaintiff has failed to exhaust her administrative remedies because the March 9, 1998 EEOC charge she filed referenced a claim for retaliation discrimination, but is scant with respect to sex discrimination. (Brown Decl. at 30, Ex. 43.) This situation is analogous to the one at issue in *Shah*. Like *Shah*, Plaintiff is attempting to rely on the same employer actions to demonstrate discrimination under theories never investigated by the EEOC. This she cannot do. Plaintiff has not exhausted her administrative remedies as to her sex discrimination claim with respect to the 1997 merit increase and bonus denial. As such, this claim is not properly before the Court.

Similarly, the Court finds that in connection with her claim of age discrimination for the denial of a merit increase and bonus pay, Plaintiff has not satisfied her duty, under *Stevens*, of notifying the EEOC of her intent to file a lawsuit alleging age discrimination

under the ADEA. The EEOC charge Plaintiff filed complaining about the denial only alleged retaliation discrimination. Therefore, this claim also is not properly before the Court.

ii. Working "Short"

Plaintiff alleges that throughout 1998, Plaintiffs supervisors made various decisions which compelled Plaintiff to work with an inadequate number of employees, making it very difficult for her to achieve the goals set for her and her unit. Plaintiff's March 9, 1998 EEOC charge for retaliation discrimination alleged that another supervisor, Joe Perkins, used "at least 40 of more employees daily to process his mail, while [Plaintiff] used only 10 to 12 employees." (Brown Decl. at ¶ 30, Ex. 43.) Plaintiff's November 18, 1998 EEOC charge for sex and age discrimination alleged that Plaintiff was continually forced to work with fewer employees than she needed and fewer employees than other units had. (Brown Decl. at ¶ 31, Ex. 44.) Plaintiff's July 8, 1999 EEOC charge for age discrimination alleged that Plaintiffs supervisors refused to assign casual employees to her unit "causing [Plaintiff] to work with a smaller number of employees and . . . forcing [her] to work short on a daily basis." (Brown Decl. at 31, Ex. 44.) The Court finds that with respect to Plaintiff's claims that Defendant was motivated by retaliation, sex, and age discrimination when compelling Plaintiff to work "short," Plaintiff has exhausted her administrative remedies. These claims are properly before the Court.

iii. Groundless Criticism

Plaintiff claims that during 1998 and 1999, her supervisors repeatedly criticized her work when they had no reason to do so. Specifically, Plaintiff alleges that in February 1999, Plaintiff's supervisor, Sharon Bell, told Plaintiff that her unit's hourly output was much too low. Plaintiff claims that this "reprimand" was unfounded because she had exceeded her goals for that day. (Brown Decl. at ¶ 13.) None of Plaintiff's EEOC charges allege that her supervisors criticized her work. However, because the investigation into Plaintiffs claims about being forced to work short likely would have uncovered any criticism of Plaintiffs efficiency or output levels, the Court finds that Plaintiffs groundless criticism claims are like or reasonably related to the allegations in the administrative charges she did file. Therefore, the Court finds that, with respect to the groundless criticism allegation, Plaintiff has exhausted her administrative remedies under Title VII and, by virtue of the

administrative charge, has properly notified the EEOC of her intent to file a lawsuit for age discrimination under the ADEA such that the sex, age, and retaliation discrimination claims for groundless criticism are properly before the Court.

iv. Denial of Requests for Personal Leave and to Allow Plaintiff to Have Union Representative Present at Meeting With Supervisor'

Plaintiff claims that on October 15, 1998, her request for one hour of personal leave was improperly denied. (Brown Decl. at ¶ 25.) Plaintiff also alleges that on August 19, 1999, one of Plaintiffs supervisors, Edna Gray, refused to allow Plaintiff to have her union representative present at a meeting between Ms. Gray and Plaintiff. (Brown Decl. at 14.) Neither denial was alleged in any of Plaintiffs EEOC charges nor could either be considered like or reasonably related to any of the allegations enumerated in the charges. Therefore, as to these allegations, the Court finds that Plaintiff has failed to exhaust administrative remedies under Title VII and has failed to properly notify the EEOC of her intent to file a lawsuit for age discrimination under the ADEA. Plaintiffs claims that Defendant discriminated against her on the bases of sex', age, and retaliation by denying requests for personal leave and for the presence of a union representative at a meeting are not properly before the Court.

v. Sacks of Mail

Plaintiff claims that throughout 1998, she was repeatedly instructed by her supervisors that her unit was to work sacks of mail only. (Brown Decl. at 11119, 12.) Because Plaintiffs unit was designated only to use the Small Parcel Bundle Sorter and that machine could not process the majority of the mail contained in the sacks of mail, Plaintiff claims that her supervisors made it very difficult for her to accomplish the goals set for her. These factual allegations, while not identical to those alleged in Plaintiffs EEOC charges, are reasonably related to the facts alleged in Plaintiff's November 18, 1998 EEOC charge of sex and age discrimination and her July 8, 1999 EEOC charge of age discrimination. As described above, Plaintiff alleges in these two charges that her supervisors repeatedly took actions that forced Plaintiff (and Plaintiff's unit) to work much harder than she had previously. While these charges do not make specific allegations that Plaintiff was required to work sacks of mail only, the allegations

are reasonably related to one another, under the standard set forth in *Ong*, such that the Court finds that Plaintiff has exhausted her administrative remedies on this claim and the claim is properly before the Court.

To the extent that Plaintiff claims that her supervisors were retaliating against her for engaging in protected activity when they instructed her to work sacks of mail only, the Court finds that Plaintiff has exhausted her administrative remedies there as well. Even though Plaintiff never filed an administrative complaint making that precise claim, Plaintiff's March 9, 1998 EEOC charge is like or reasonably related to the present allegation. In that charge, Plaintiff alleged retaliation discrimination and described being forced to work with fewer employees than other similarly situated supervisors. The EEOC investigation into the working short retaliation allegation would likely have turned up retaliation in the form of forcing Plaintiff to work sacks of mail only. Therefore, this claim is properly before the Court,

vi. Constructive Termination

Plaintiff claims that she was constructively terminated by Defendant when she was forced to leave work in August 1999 and retire one year later because of the mental distress she experienced as a result of the mistreatment to which she was subjected. (Brown Decl. at 8, 27.) Plaintiff did not file an EEOC charge following her departure from duty. The constructive termination claim is not like or reasonably related to any of the allegations enumerated in the EEOC charges she filed before she left the postal service. Therefore, as to the allegation that Plaintiff was constructively terminated on the basis of sex, age, or retaliation discrimination, the Court finds that Plaintiff has failed to exhaust her administrative remedies under Title VII and has failed to properly notify the EEOC of her intent to file a lawsuit for age discrimination under the ADEA. The constructive termination claim is not properly before the Court.

Plaintiff also alleges that her request for a change in scheduled days off was denied. (Brown Decl. at 22.) This allegation is not specific as to time and does not refer to any evidence in the record which would indicate the date upon which this alleged denial occurred. Because Plaintiffs counsel informed the Court at oral argument that Plaintiff does not make a claim of employment discrimination for the alleged actions taken by Defendant prior to December 10, 1997, and because the Court does not have an affirmative duty to "mine the record," the Court declines to search the volumes of evidence provided by Plaintiff to determine whether this particular allegation occurred within the relevant time period. *See e.g. Schneider v. TRW, Inc.*, 938 F.2d 986, 990-991 n.2 (9th Cir. 1991). Therefore, the alleged denial of a request for a change in scheduled days off will not be considered by the Court. The Court notes, however, that even if the alleged denial for a schedule change were considered, Plaintiff has failed to exhaust her administrative remedies as to this claim.

B. Plaintiff Timely Sought Administrative Remedies With Respect to the Alleged 1997 Denial of a Bonus and Merit Increase

Defendant contends that Plaintiff failed to timely seek administrative remedies through the EEOC for the alleged 1997 denial of a bonus and a merit increase. The Court disagrees with Defendant and finds that Plaintiff did timely seek administrative remedies.' It is true that Plaintiff learned on October 31, 1997 that her supervisor had recommended that she not receive a merit increase and bonus for that year and that Plaintiff did not initiate the administrative remedy process (by requesting EEOC counseling) until December 29, 1997, beyond the 45 days limitations period. (Declaration of Katherine B. Dowling ("Dowling Decl."), if 13, Ex. 12.) Plaintiff's contention that the October letter was not definitive regarding the decision that would be made and that she did not think that constituted the effective date of action for purposes of seeking EEOC counseling, is compelling, particularly in light of Plaintiff's off-duty status between October 31, 1997, when she received the letter, and December 10, 1997 when, during a conversation with her supervisor, she learned that the decision to exclude her from a merit increase and bonus had been made. Moreover, however, even without such a compelling explanation, the Ninth Circuit has held that "[s]ince laypersons initiate the administrative process for resolving employment discrimination complaints, the procedural requirements for Title VII actions are 'neither interpreted too technically nor applied too mechanically.'" *Greenlaw v. Garrett*, 59 F.3d 994 (9th Cir. 1994) (citation omitted); see also *Ong*, 642 F.2d at 319. Even if the October 31, 1997 letter is considered the effective date of the personnel action in question, which the Court is not convinced it should be, Plaintiff, by making her request on December 29, 1997 missed the 45-day deadline to request EEOC counseling by 14 days, and the Court declines to interpret the timeliness requirement of Title VII's administrative remedy prerequisite so mechanically as to find Plaintiff's current claim barred. Plaintiff has exhausted her administrative remedies as to her claim that Defendant discriminated against her on the basis of retaliation when she was denied a merit increase and bonus pay in 1997.

This section only addresses Plaintiff's allegation of retaliation discrimination claim with respect to the 1997 denial of a merit increase and bonus. The Court has already determined that Plaintiff's claims of sex and age discrimination for Defendant's alleged denial of a merit increase and bonus are barred for failure to exhaust administrative remedies. (See discussion *supra*.)

III. Plaintiff Must Establish a *Prima Facie* Case of Discrimination to Survive Summary Judgment

A. Sex and Age Discrimination

Title VII of the Civil Rights Act prohibits discrimination in employment on the basis of sex. 42 U.S.C. § 2000e *et seq.* The Age Discrimination in Employment Act makes it unlawful for an employer to discriminate against an individual who is at least 40 years old because of such individual's age. 29 U.S.C. § 631 *et seq.* In an employment discrimination case, "[t]he proper legal framework for determining whether [a plaintiff's] claim should survive summary judgment is the familiar burden-shifting scheme set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)." *Aragon v. Republic Silver State Disposal*, 292 F.3d 654 (9th Cir. 2002). The plaintiff must establish a *prima facie* case of discrimination. A *prima facie* case of disparate treatment under Title VII requires that a plaintiff present evidence that (1) she is a member of a protected class, (2) she was performing according to her employer's legitimate expectations, (3) she was subject to an adverse employment action, and (4) similarly situated employees not in her protected class were treated more favorably. *Id.* "The requisite degree of proof to establish a *prima facie* case for Title VII ... on summary judgment is minimal and does not even need to rise to the level of a preponderance of the evidence." *Chuang v. University of Cal. Davis*, 225 F.3d 1115, 1124 (9th Cir. 2000). If a plaintiff establishes a *prima facie* case, the burden then shifts to the defendant to "articulate a legitimate, nondiscriminatory reason" for the conduct of which the plaintiff complains. *Aragon*, 292 F.3d at 658. If the employer sustains that burden, the plaintiff must then demonstrate that the employer's articulated reason is "a pretext for unlawful discrimination." *Id.*

In the case at bar, Plaintiff claims that her supervisors mistreated her in numerous ways and that that mistreatment constituted sex and age discrimination. After conducting a thorough analysis to ascertain which allegations are barred for failure to exhaust administrative remedies, (*see discussion supra*), the Court determines that only the following sex and age discrimination claims remain:

- Plaintiff's claim that her supervisors compelled her to work "short;"
- Plaintiff's claim that her supervisors groundlessly criticized her work; and

- Plaintiff's claim that her supervisors instructed her to work sacks of mail only. (Brown Decl. at in 9-12, 26.)

The Court will assess whether Plaintiff has established a *prima facie* case of sex and age discrimination for these claims only and because they are related to one another, the Court will consider them together.

i. Member of the Protected Class

Plaintiff satisfies the first required element of a *prima facie* case of sex and age discrimination because she is a woman over the age of 40.

ii. Performing According to Her Employer's Legitimate Expectations

Plaintiff claims to satisfy the second element, that she was performing according to her employer's expectations, but she offers little evidence other than her own assessment of her performance to support that claim.¹⁰ (See e.g. Brown Decl. at 4, 7, 13.) The Ninth Circuit has found, however, that a plaintiff's self-assessment is sufficient for purposes of establishing the second requirement in a *prima facie* case. *Aragon*, 292 F.3d at 660. The Court therefore finds that Plaintiff has established the second required element.

iii. Adverse Employment Action

"[N]ot every employment decision amounts to an adverse employment action." *Brooks v. City of San Mateo*, 229 F.3d 917, 928 (9th Cir. 2000). Courts must examine an employer's action objectively, not subjectively, to determine whether it was adverse. *Green v. Maricopa County Cmty. College Sch. Dist.*, 265 F. Supp. 2d 1110 (D. Ariz. 2003). The Ninth Circuit has determined that the test for determining which sorts of employment decisions constitute adverse action is whether a reasonable person, as a result of having been subjected to the decision, would be deterred from engaging in protected activity. *Ray v. Henderson*, 217 F.3d 1234 (9th Cir. 2000). Employment decisions that nearly always constitute an adverse employment action are termination, dissemination of a negative employment reference, issuance of an undeserved negative performance review, and refusal to consider for promotion. *Brooks*, 229 F.3d at 928-29. Conduct that has been held not to

¹⁰ In fact, one of Plaintiff's allegations, that her supervisors criticized her work, provides some evidence that Plaintiff's supervisors were not entirely satisfied with her performance. (Brown Decl. at 13; Complaint at 34.)

rise to the level of adverse employment action includes declining to hold a job open for an employee, ostracism by co-workers, or badmouthing an employee outside the job reference context. *Brooks*, 229 F.3d 917. Actions which result in a tangible loss to the employee (e.g. financial disadvantage) are often deemed "adverse," although the Ninth Circuit warned in *Ray* that "the severity of an action's ultimate impact (such as loss of pay or status) 'goes to the issue of damages, not liability.'" *Ray*, 217 F.3d at 1243. For example, certain kinds of actions such as providing an unfavorable employment reference where it had no effect on a prospective employer's hiring decision, a disadvantageous transfer, and the imposition of a more burdensome work schedule have been considered adverse by the Ninth Circuit even though these employer decisions did not result in a tangible loss to the employee. *Id.*

In the case at bar, Defendant argues that the conduct Plaintiff claims constituted adverse employment action really only amounted to personnel decisions that Plaintiff did not like. (Motion at 6.) However, the claims that her supervisors compelled her to work with fewer employees than she needed to achieve the goals set for her, groundlessly criticized her work, and required her to work exclusively the type of mail that, for the most part, could not be processed using the machine Plaintiff's unit was assigned to use, are not mere personnel decisions. Indeed, at oral argument, Defendant's counsel admitted that Plaintiff's allegations about being forced to work sacks of mail, if true, would constitute an adverse employment action.

The Ninth Circuit's decision in *Ray*, holding that an employer's action which effectively altered the employee's ability to fulfill his duties within the same amount of time constituted an adverse employment action, is instructive here. There, the employer locked down the postal facility thereby requiring the plaintiff employee to lock and unlock the loading dock every time he left the building, making it very difficult for him to get all of his assigned work done. Here, compelling Plaintiff to work with fewer employees than she needed to achieve her goals, forcing her to work sacks of mail only, and criticizing her work without cause, are analogous to the employer's conduct in *Ray*. Although Plaintiff suffered no decrease in pay, no change in hours, no substantial change in her assignment, work location, authority, or responsibility, Plaintiff was arguably hindered by her supervisors from doing her job properly. Her job was made significantly more burdensome by her supervisors' conduct. Therefore, the Court finds

that these decisions amount to adverse employment actions such that Plaintiff has established the third element of her *prima facie* case.

iv. **Similarly Situated Employees Outside of Her Protected Class Treated More Favorably**

To establish a *prima facie* case of disparate treatment based on sex or age, Plaintiff must provide evidence that similarly situated employees not in her protected class were treated more favorably. *McDonnell Douglas*, 411 U.S. 792. Individuals are similarly situated when they "have similar jobs and display similar conduct." *Vasquez v. County of L.A.*, 349 F.3d 634, 641 (9th Cir. 2003). Plaintiff contends that similarly situated male supervisors who were younger than she, such as Joe Perkins and Louis Buckingham, were assigned far more employees than Plaintiff such that they, unlike Plaintiff, were not forced to work short. (Brown Deck at in 10-11.) Plaintiff also contends that on August 12, 1999, her supervisor directed her to give Buckingham her jitney (apparently used for transporting the processed mail) even though Plaintiff "clearly needed it much more than he." (Brown Decl. at ¶ 26.) To satisfy the fourth requirement and establish a *prima facie* case of discrimination, Plaintiff must provide competent evidence that these employees were, in fact, treated differently, and that they were similarly situated to Plaintiff. Plaintiff has done the former but not the latter.

Plaintiff has submitted sparse but adequate evidence that Perkins and Buckingham were assigned more employees than Plaintiff or were treated more favorably in other ways with respect to working conditions. The portions of Plaintiff's Declaration relevant to these claims (Paragraphs 912 and 26) refer the reader to Exhibits 1-13, 40-41, and 51 for evidence that Defendant did not make Perkins' and Buckingham's jobs more difficult in the way Defendant made Plaintiff's job difficult. While the Court has no affirmative duty to "mine the record," the Court has engaged in a fairly thorough examination of Plaintiff's very disorganized set of exhibits. That examination reveals that Exhibits 1-13 and 40-41 consist of hundreds of pages of charts describing the amount and type of mail Plaintiff processed each day, computer printouts describing various glitches in the system, and the names of casual employees assigned to Plaintiff's unit on various days. In those pages, the Court is able to find only two documents that can possibly be construed to support Plaintiff's claim that Perkins and Buckingham were treated more favorably. The first of these, the thirteenth page in Exhibit 1 dated March 3, 1998,

contains a note written by Plaintiff at the very bottom: "casuals moved to other units (9)." While this document suggests that Plaintiff's employees were re-assigned to other units, there is no indication in this document that it was to Perkins' or Buckingham's units (or to any other male and/or younger supervisor's unit) that these employees were moved. The "evidence" offered by Plaintiff is insufficient to support a finding that Plaintiff has demonstrated that other employees were treated more favorably. Second, Exhibit 40, a memo from Plaintiff to supervisor Edna Gray dated August 12, 1999, describes Ms. Gray's decision to give Plaintiff's jitney (which assists in the processing of the mail) to Mr. Buckingham. This is evidence, however weak, that other employees were treated more favorably than Plaintiff. Similarly, Exhibit 51, the declaration of Beverly Jefferson, also supports Plaintiff's claim that Joe Perkins was assigned more employees than Plaintiff. (Brown Decl. at ¶ 40, Ex. 51 at ¶ 6.) Plaintiff has provided sufficient, albeit scant, evidence that other employees were treated more favorably than she.

Plaintiff has submitted no evidence, however, other than her own naked conclusions, that Mr. Perkins and Mr. Buckingham were similarly situated to Plaintiff. (See e.g. Brown Decl. at ¶¶ 10, 11.) Plaintiff claims that Joe Perkins was "a similarly situated male supervisor, ten years younger than [Plaintiff]." (*Id.* at ¶ 10.) Plaintiff claims that Louis Buckingham was "a similarly situated male supervisor younger than [Plaintiff]." (*Id.* at ¶ 11.) Defendant contends that Mr. Perkins and Mr. Buckingham were not similarly situated to Plaintiff because they had "different jobs that necessarily required a different number of workers." (Motion at 7.) Defendant offers the sworn statement of supervisor Edna Gray to support that contention. (See Dowling Decl., ¶ 10, Ex. 9.) Plaintiff, on the other hand, provides no competent evidence to counter Defendant's contention. She provides no evidence that Mr. Perkins and Mr. Buckingham supervised the same type of unit as Plaintiff, that their units processed the same type of mail, used the same types of equipment, or required the same number of employees and casuals. Plaintiff instead relies on her own conclusory allegations, which are insufficient to create an issue of material fact. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff has not demonstrated that the employees who were treated more favorably, if indeed they were, were similarly situated to Plaintiff. Therefore, Plaintiff has not met her burden with respect to the fourth requirement and has not

established a *prima facie* case that she was discriminated against on the basis of sex or age or both when she was forced to work "short." The Court GRANTS Defendant's summary judgment motion as to that claim.

With respect to Plaintiff's claims that Defendant discriminated against her by instructing to work sacks of mail only and by groundlessly criticizing her work, Plaintiff fails to offer any evidence, nor does she even contend, that other similarly situated supervisors who were not in Plaintiff's protected class were treated more favorably. Plaintiff instead relies only on her allegations that the sacks instruction and the criticism interfered with her ability to reach the goals set for her. (See e.g. Brown Decl. at ¶¶ 9, 12, 13.) This is not enough. To establish a *prima facie* case of age and sex discrimination for the sacks of mail and groundless criticism claims, Plaintiff has the burden, even if that burden is a low one, of demonstrating that male or under-40 supervisors or both who used SPBS machines were not instructed to work sacks of mail only and were not groundlessly criticized. Plaintiff has not met that burden. Therefore, the Court finds that Plaintiff has not established a *prima facie* case of sex or age discrimination on her sacks of mail and groundless criticism claims and the Court GRANTS Defendant's summary judgment motion as to those claims.

B. Retaliation Discrimination

Section 704 of Title VII prohibits retaliation against an employee for opposing unlawful discrimination. *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1124 (9th Cir. 2004) (citing 42 U.S.C. § 2000e-3(a) (2003)). To establish a *prima facie* case of retaliation under Title VII, a plaintiff must show that (1) she took some action to protect her Title VII rights, (2) an adverse employment action was thereafter taken against her, and (3) a causal link existed between the two events. *McGinest*, 360 F.3d at 1124.

In the case at bar, Plaintiff claims that she was subjected to retaliation discrimination after protesting prohibited discriminatory employment practices. She alleges that she began informally protesting these practices shortly after she became a supervisor in 1991 and continued to protest the practices, both informally and by filing formal EEOC charges, until her retirement. (Brown Decl. at 8.) She alleges that as a consequence of engaging in this protected activity, Plaintiff's supervisors took a variety of retaliatory actions. After conducting a thorough analysis to ascertain which of these allegations is barred for failure to exhaust administrative remedies (see discussion *supra*), the Court determines that the following retaliation

discrimination claims remain:

- Defendant retaliated against Plaintiff for engaging in protected activity by denying her a merit increase and bonus in 1997;
- Defendant retaliated against Plaintiff by compelling her to work "short;"
- Defendant retaliated against Plaintiff by groundlessly criticizing her work; and
- Plaintiff's claim that her supervisors instructed her to work sacks of mail only. (Brown Decl. at VI 9-12, 26.)

The Court will assess whether Plaintiff has established a *prima facie* case of retaliation discrimination for these claims only.

i. 1997 Merit Increase and Bonus Denial

Plaintiff alleges that her supervisors discriminated against her on the basis of retaliation when they determined that she would not receive a merit increase and bonus for 1997.

a. Protected Activity

Plaintiff has met the first requirement of a *prima facie* case because she filed four EEOC charges during the course of her employment at the Postal Service: one on March 29, 1994, one on March 9, 1998, one on November 18, 1998, and one on July 8, 1999. The filing of a complaint with the EEOC is "the quintessential action protected by § 704." *McGinest*, 360 F.3d at 1124 n.19.¹ Therefore, Plaintiff's EEOC charges are sufficient to satisfy the first prong of a *prima facie* case of retaliation discrimination.

b. Adverse Employment Actions

Defendant's alleged denial of a merit increase and bonus certainly constitutes an adverse employment decision. As discussed above, an employment action is "adverse" for purposes of

¹ Plaintiff also claims to have made additional, less formal, complaints regarding her perceived discriminatory treatment. Plaintiff provides several copies of informal written complaints she made regarding her perceived mistreatment by her superiors but none of these alleges discrimination. (See e.g. Complaint, Ex. 21.) These informal complaints, therefore, are not considered protected activity. See e.g. *Bahri v. Home Depot USA, Inc.*, 242 F. Supp. 2d 922 (D. Ore. 2002) (finding that generalized complaints lacking in allegations of discrimination could not constitute protected activity). The Court is unable to locate any competent evidence provided in the Plaintiffs voluminous record to establish that Plaintiff engaged in any protected activity other than the filing of four EEOC complaints.

establishing a *prima facie* case of discrimination where the action is one that is likely to discourage a reasonable person from engaging in protected activity. See e.g. *McGinest*, 360 F.3d at 1124 n.19. The court in *Brooks* found that an employer's decision not to consider an employee for promotion was an adverse employment action. 229 F.3d at 928-29. The denial of a pay increase or a bonus is analogous. Defendant does not dispute that this decision constitutes an adverse employment action. (Motion at 7.) The Court therefore finds that Plaintiff has satisfied the second requirement.

c. Causal Link Between the Two Events

Plaintiff has presented insufficient evidence to support a finding that there is a causal link between Plaintiff's protected activities and Defendant's decision to deny a merit increase and bonus pay in 1997. The bulk of Plaintiff's protected activity (the filing of EEOC charges) occurred in 1998 and 1999 while the adverse employment action occurred in late 1997. While it is true that Plaintiff filed an EEOC charge in 1994, the Court does not find that the 1997 conduct could be reasonably linked to protected activity engaged in three years beforehand such that a *prima facie* case of retaliation discrimination is established. See e.g. *Vasquez*, 349 F.3d at 647 (thirteen months between protected activity and perceived adverse action was deemed too attenuated). Temporal attenuation is not necessarily dispositive where the plaintiff provides evidence of surrounding circumstances that show a retaliatory motive, but Plaintiff has not done that here. *Id.* Therefore, the Court GRANTS Defendant's motion for summary judgment as to Plaintiff's claim that Defendant retaliated against her for engaging in protected activity when she was denied a merit increase and bonus pay in 1997.

ii. Working "Short," Groundless Criticism, and Instructions To Work Sacks of Mail Only

Plaintiff alleges that throughout 1998 and 1999, her supervisors compelled her to work with fewer employees than she needed, instructed her to work sacks of mail only, and groundlessly criticized her output levels. Plaintiff alleges that these actions were discriminatory under Title VII on the basis of retaliation for the complaints, both formal and informal, that she lodged regarding the discriminatory nature of her supervisors' conduct.

a. Protected Activity

Plaintiff has met the first requirement of a *prima facie* case because she filed three EEOC charges in the relevant time period: one on

March 9, 1998, one on November 18, 1998, and one on July 8, 1999. The filing of a complaint with the EEOC is "the quintessential action protected by § 704." *McGinest*, 360 F.3d at 1124 n.19. While Plaintiff has submitted no competent evidence, other than her own declarations, that the Court can locate to suggest that Plaintiff made additional, less formal, complaints regarding her perceived discriminatory treatment, the EEOC charges are sufficient to satisfy the first prong of a *prima facie* case of retaliation discrimination.

b. Adverse Employment Actions

The second requirement of a *prima facie* case of retaliation discrimination is that the conduct complained of constitute objectively adverse employment decisions. *Green*, 265 F. Supp. 2d 1110. Being forced to work "short," being instructed to work sacks of mail only, and being groundlessly criticized constitute adverse employment actions. (See sex and age discrimination discussion *supra*.) Therefore, Plaintiff has satisfied the second requirement of her *prima facie* case.

c. Causal Link-Between the Two Events

To demonstrate a causal link between protected activity and adverse employment actions, a plaintiff must "present evidence sufficient to raise the inference that her protected activity was the likely reason for the adverse action." *Cohen v. Fred Meyer, Inc.*, 686 F.2d 793, 796 (9th Cir. 1982) (citations omitted). "Essential to a causal link is evidence that the employer was aware-that the plaintiff had engaged in the protected activity." *Id.* Here, Plaintiff has met her burden by presenting evidence of a causal link between her protected EEOC activity and her supervisors' groundless criticism of her work, their decisions forcing Plaintiff to work with fewer employees than she needed, and their instructions for her to work sacks of mail only.

Plaintiff filed EEOC charges in March 1998, November 1998, and July 1999. She alleges that she was forced to work "short" from March 1998 through August 1999, was instructed to work sacks of mail only throughout that time, and was repeatedly groundlessly criticized. Defendant contends that the employees who made these decisions were unaware of Plaintiff's EEOC activity. However, Plaintiff contends that once EEOC complaints are filed, they are sent

to Nathan Griffin, the Senior Manager of Distribution Operations, for a response, and that all of the complainant's supervisors then became aware of the complaint. Moreover, just a few weeks after Plaintiff filed her July 1999 EEOC complaint against Edna Gray and Nathan Griffin for failure to assign casual employees, Plaintiff claims that Ms. Gray took the jitney assigned to Plaintiff and reassigned it to Mr. Buckingham and she provides evidence of that event. (See Brown Decl. at 26, Ex. 40.) And Mr. Griffin who, according to the July 1999 EEOC charge, made the decision about the assignment of casuals almost certainly knew, as Plaintiff maintains, of Plaintiff's prior EEOC activity. The Court finds sufficient evidence to support a finding of a causal link here such that there is a triable factual issue. Plaintiff has established a *prima facie* case of retaliation discrimination with respect to being forced to work short, being instructed to work sacks of mail only, and being groundlessly criticized. The Court therefore DENIES Defendant's motion for summary judgment as to those claims. 12

IV. With Respect to Plaintiff's Claim That Defendant Unlawfully Retaliated Against Her For Filing EEOC Charges By Forcing Her to Work "Short," Forcing Her To Work Sacks of Mail Only, and Groundlessly Criticizing Her Work, Plaintiff Has Adequately Demonstrated That Defendant's Justifications Are Pretext

Defendant contends that the assignment of casual employees were merely personnel decisions that Plaintiff did not like. Defendant explains that casual employees were assigned on the basis of which areas needed additional workers most to maintain efficiency and that Plaintiff's unit was often adequately staffed while others were not; thus, casual employees were sometimes reassigned. While Defendant has met its burden to articulate a legitimate, nondiscriminatory reason for the adverse action, Plaintiff has met her low burden of revealing this justification to be pretext. As discussed above, Plaintiff has presented sufficient evidence to suggest that Plaintiff's supervisors' decisions to assign Plaintiff's casual workers to other units might have been motivated by retaliation for Plaintiff's persistent participation in the EEOC process. As such, there is a genuine issue of material fact and the Court declines to adjudicate Plaintiff's working short claim at this stage.

With respect to Plaintiff's allegations that her supervisors instructed Plaintiff to work sacks of mail only and groundlessly criticized her output levels, Defendant does not proffer justifications.

Because Plaintiff has established a *prima facie* case as to these claims, the Court finds that summary

Because Defendant's argument that Plaintiff cannot defeat summary judgment by contradicting previous sworn testimony is not pertinent to any discriminatory conduct that Plaintiff claims occurred after the deposition she gave in her earlier civil action, the Court need not address it.

Appendix F

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 19848
Washington, D.C. 20036

Johnnie L. Brown,
Complainant,

v.

John E. Potter,
Postmaster General,
United States Postal Service,
(Pacific Area),
Agency.

Appeal No. 01A12705

Agency No. 1F-946-0029-98; 1F-946-0051-99

Hearing No. 220-A0-5184X

DECISION

Pursuant to 29 C.F.R. § 1614.405, the Commission accepts the complainant's appeal from the agency's final order in the above-entitled matter. Complainant alleged that the agency had discriminated against her on the bases of sex (female), age (D.O.B: January 5, 1938), and reprisal for prior EEO activity when:

- (I) on October 10, 1997, she was advised that her merit pay evaluation was rated unacceptable and ultimately denied; and
- (z) the agency's manager of distribution, operations denied her requests to assign more casuals to her operation and denied her request for a change of scheduled days off.

After a review of the record in its entirety, including consideration of all statements submitted on appeal, it is the decision of the Equal Employment Opportunity Commission to affirm the agency's final order, because the Administrative Judge's issuance of a decision without a hearing was appropriate and a preponderance of the record evidence does not establish that discrimination occurred.

5 STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0701)

The Commission may, in its discretion, reconsider the decision in this case if the complainant or the agency submits a written request containing arguments or evidence which tend to establish that:

The appellate decision involved a clearly erroneous interpretation of material fact or law; or

The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar** days of receipt of this decision or within twenty (20) calendar days of receipt of another party's timely request for reconsideration. *See* 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), 9-18 (November 9, 1999). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20035. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. *See* 29 C.F.R. § 1614.604. The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any

supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. *See* 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0900)

You have the right to file a civil action in an appropriate United States District Court within **ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z1199)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action without payment of fees, costs, or other security. *See* Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). **The grant or denial of the request is within the sole discretion of the Court.** Filing a request for an attorney does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

FOR THE COMMISSION:

s/
Carlton M. Hadden, Director
Office of Federal Operations

Dec. 18 2002

Date

CERTIFICATE OF MAILING

For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to complainant, complainant's representative (if applicable), and the agency on:

Appendix G

The following is the names of the supervisors who I feel has discriminated against me, sexually harassed me and caused me emotional distress.

On the original EEO that I filed on July 8, 1999, I also, stated. that Mr. griffin is continuing to cause me emotional distress, sexually harass me and discriminate against me by causing me to work with a small number of employees and deny all of my request, and by forcing me to work short on a daily basis. He is also causing the employees emotional distress by forcing them to work harder than other employees. (See exhibit #1). I feel that Mr. Nathan Griffin and all of the other supervisors of whom I will name has caused me emotional distress, sexually harassed me and discriminated against me. Since Mr. Griffin was the supervisor of all of supervisors he is totally responsible because he allowed them to cause me emotional distress. When they cause me emotional distress, they are sexually harassing me and when they favor male and younger supervisors over me they are discriminating against me. (See exhibit #2).

On 03-09-91, Mr. Cruz yelled at me in the present of other office staff members. Return to your unit immediately or I will" he did not complete the statement. The employees were on break and I was processing a grievance in the office while they were on break. He used any opportunity to cause me emotional distress. There are two statements from employees who will conduct, which caused me emotional distress, I felt total body pain, nausea, headaches, anxiety, mentally drained, unable to eat sleep or concentrate for long periods of time.

Mr. Cruz reassigned me to the Parcel Post Unit, to ensure that I would not be allowed to supervise Ms. Hernandez, (the employee that he was dating). I spoke to Ms. Hernandez in regards to her work performance. His conduct became more indifferent toward me. He began to stand in my unit making negative comments. (example, you know the mail must remain current, your employees are returning late from break. Although, the employees were performing over and above the assigned goal. (See exhibit #5, Parcel Post Productivity Log). I felt lost, hurt, numb, lost of words, headaches, upset stomach, unable to concentrate for long periods of time.

Johnny More was one of the supervisors on the floor which he did not harass or cause emotional distress, Mr. Cruz forced me to do his job in addition to my job many times. He is a male and younger supervisor. 03-16-91, Mr. Carlos Cruz refused to evaluate me, he delegated his responsibility to Bill Lewis and Louis Buckinham, who were not on higher level on that day as Mr. Cruz

was on duty. (See exhibit #6, copy of the payroll journal). Also see E1-328, part#1, section #4,d, rules and regulations showing that as my supervisor he was responsible for evaluating me. "(See exhibit #7).

Also, see, EL-328, part-4, postal rules and regulations showing my rights to request an evaluation and Mr. Cruz and Mr. Griffin's responsibility to respond to my request and to evaluate me. (See exhibit #8).

I felt ill, nausea, filled with anxiety, cried a lot hurt.

On 04-03-91, Mr. Cruz called a meeting with the employees who work for me. He asked them what was my attitude toward them, how did I treat them, what tone of voice did I use while speaking to them, how did I treat them, what were their general feeling toward me. I felt ill, hurt, cried a lot, I had lost control of my unit and my employees. They had no respect for me which made it difficult and almost impossible for me to run my unit. On 04-24-91, I submitted a letter to Mr. Nathan Griffin, requesting second review of my merit. (See exhibit #9).

On 06-23-91, I submitted a second letter to Mr. Griffin, a follow-up, as he did not respond to my other request dated 04-24-91). See exhibit #10). I felt left out, hurt, ill, nausea, empty, filled with anxiety, unable to control my tears.

On 09-13-91, Ms. Flossie Morris yelled at me in a meeting while they were discussing an employee who worked for me. (See Johnny Scott and William Sutton's Declaration.

On 11-24-91, Ms Morris instructed me to give an employee a discussion, immediately after that incident she called a meeting with twelve (12) employees where she continued her harassment and belittlement of me, before a group of employees including a request for a removal from the Postal Service. I felt hurt, empty filled with anxiety, cried a lot. During the month of December, 1991, Ms. Morris and Mr. Cruz continued to intentionally inflict emotional distress upon me by yelling at me and continuing to hold meetings with employees to cause me additional humiliation and pain. I felt as if I had become a sounding board, a stepping stone,

I heard ringing in my ears, had severe headaches, unable to eat or sleep, I cried in meetings and the pain got more severe. I would leave the workroom floor often, because many times I could not stop crying and I would vomit.

On 01-28-92, Mr. Cruz called several employees in the office and he asked them to evaluate me as a supervisor, "tell me what is her attitude

toward von and how does she treat you, what tone of voice does she use, what is your general feeling toward her," I felt hurt, humiliated, nausea, unable to face employees. I felt that I would be relieved if when I walked across the floor, I could find a trap door and fall below the floor while I walk, to avoid my employees seeing how I had been affected by my supervisors' treatment. I would always go to lunch room when there were no one having lunch or break, as T was ashamed to look at people.

On 04-02-92, I asked for a review of my merit, I got no response from Mr. Cruz nor Mr. Griffin. This is the second consecutive year that they have refused to evaluate me nor respond to my request. (See exhibit #11). Their intentional, extreme and outrageous conduct caused me pain and humiliation, as any request that I submitted was being avoided, everyone (my subordinates and my peers had knowledge of the extreme and outrageous that Ms. Morris and Mr. Cruz were causing me to endure. I felt, nausea, hurt, body pain, unable to sleep, eat or concentrate for long periods of time. I had severe headaches and dizziness.

On 04-06-92, all supervisors who worked on the Third floor, had telephones on their desk, as supervisors were required to respond to pages from the office and other duties which might require communication by telephone. I asked Ms. Morris to allow me to have a telephone installed at my desk she denied my request. ("you don't need a telephone, you can share the phone that is in the unit near to you"). On 04-07-92, I requested annual leave from Mr. Cruz, he denied my request He had no valid reason, as Bill Lewis approved my request. (See exhibit#12), Mr. Cruz prejudice toward me was impairing his judgment, which caused him to be unfair and impartial to me.

04-16-92, A meeting was held with Ms. Morris, Mr. Cruz and NAPS Representative, Rena Williams. I felt that I was finally being heard, maybe some positive action would be taken. However, no real progress was made.

04-20-92, My annual leave was approved by Bill Lewis, Acting General Supervisor. I felt that since Ms. Morris and Mr. Cruz had denied my annual leave request, that shows a pattern of intentional infliction of emotional distress on me on their part. Bill Lewis approved my request for annual leave, there were no valid reason why they refused to approve my annual leave. (See

Exhibit# 77).

04-22-92, I called Mr. Carlos Cruz, I left a message with Eria Jackson, two (2) days of annual leave. Mr. Cruz did not return my call nor did he answer when the office clerk paged him when I called back three (3) times and I asked the clerk to page him.

04-23-92, I called back for sick leave after reliving all of the heartaches, humiliation, embarrassment, ridicule and always being singled and set aside for everything negative. I became ill. I had headaches, neck aches, I was light headed, nervous and I was filled with anxiety. I was unable to sleep, eat or concentrate for long periods of the time. Example, when I drive to the store, I may forget where I was going and why before I reach my destination.

04-23-92 - 06-28-92, I was off due to my injury.

05-14-92, Mr. Cruz informed OWCP that I only had twelve employees that were assigned to my unit. See exhibit# 13).

The total number of employees that were assigned to my unit was twenty eight (28). (See Exhibit#14). This statement shows that Mr. Cruz had reassigned my employees to other units so frequently that he were unable to remember the correct number of employees who were assigned to my unit. His lack of judgment, his negligence and his intent to inflict emotional distress on me continued as he demanded that I maintain his goals with less than 50% of the of the employees who were assigned to my unit. I felt hurt, nausea, filled with anxiety, frequent headaches and neck aches.

05-28-92, Millie Watson settled a grievance with an employee, she stated that I must treat the employees with respect and dignity. Although, she had not treated me with respect and dignity. I felt hurt and humiliated because management would not allow me to experience a part of any positive atmosphere in the work place.

07-16-92, I submitted my second request for a telephone, Ms. Morris refused to grant my request.

10-01-92, the invoice was completed, but still not submitted for a telephone.

12-16-92 - 12-31-92, my supervisors were continuing to humiliate, embarrass and demonstrate their intention to inflict emotional distress on me.

01-04-93, Mr. Cruz continued to move over 50% of my employees to

other units, and he expected me to meet his goals with a smaller number of employees.

02-12-93, forty-five (45) employees filed a complaint against me. At least 50% of the employees did not work for me, the lead person who collected the employees names did not advise them why they were signing the complaint, a large number of those employees followed the leader. The overall results of the incident shows the intentional, extreme and outrageous conduct on the part of Mr. Cruz, Ms. Morris and Ms. Watson had created a stressful work environment for me to work under, by their negative influence which were passed on to my subordinates. I felt hurt, humiliated, filled with anxiety, had frequent headaches and nausea. (See exhibit #15)

03-08-93, a meeting was called by Millie Watson to question employees regarding my attitude toward them, a continuous pattern of abuse as I had received from Ms. Morris and Mr. Cruz. I felt hurt, light headed lost of control of my unit, as the General Supervisors had allowed employees to openly degrade me in a group.

05-03-93, I issued James Brown a letter of warning. He requested to have a meeting with Millie Watson. "Millie stated (while we were in the meeting with 61e employee) that the employees should not work hard and that I should not expect them to work as hard as I work. In addition, I should not supervise them, allow them to work on their own, and if the job does not get done, so be it. I felt empty and lost, as if I had no purpose for reporting to work. The employees would never respect me as a supervisor or how could I attain fulfillment while performing my duties.

06-93, - 12-93, Millie Watson, continued to hold meetings with the employees to evaluate me. She continued to intentionally inflict emotional distress upon me. I felt distressed, humiliated, had neck and head pains, complete emptiness, nausea, and as if I had no place on the job.

On 01-94, the number of meetings increased, which caused me emotional distress. I continued to feel body pain, emptiness, numbness, nausea, ill.

On 03-09-94, I issued another letter of warning to an employee. I was given the same instructions from Millie Watson, leave the employees along, allow them to work on their own as I work too hard and the

employees should be given a break. Although, I was following their instructions, and their rules and regulations, I was openly humiliated before the employees. (ex. #16)

On 06-15-94, I called the NAPS representative to file a grievance in regards to the continued infliction of emotional distress from Ms. Watson.

On 03-29-94, I filed an EEO complaint with Millie Watson. The mail was delayed in my unit, as I was following her instructions, "do not supervisor the employees leave them alone." I felt empty, total body pain, filled with anxiety, nausea, headaches. Louis Buckinham was one of the supervisors who she treated different from me. He followed her around in my unit

helping her while she caused me emotional distress. (See exhibit #17).

On 07-94 - 12-94, Millie continued to cause me emotional distress, by calling meetings and humiliating me in the presence of large groups of employees. I continued to feel empty, total body pain, headaches, neck aches, unable to eat, sleep or concentrate for long periods of time.

On 02-16-95, I was informed by Millie Watson, that I would be required to process my 3972 data on the computer. When I started to input the data, the pressure from my having to sat at the computer which was in the office

go back and forth and monitor my unit, caused me even more emotional distress. Louis Buckinham was one of the supervisors who Millie Watson did not require to process his own 3972 data on the computer.

He would assign the clerks yet, Millie would not allow me to use a clerk to process my date. Another example of my supervisors' pattern of discrimination by favoring the male and younger supervisors over me.

03-95 -12-95, Ms. Watson continued to harass me by holding meetings with the employees, asking them to evaluate me, asking questions about how I treat them. In addition, she continued to walk the floor and observe that the flow of mail had decreased, as she had informed me to allow the employees to work as they desire.

01-96 - 05-96, the level of emotional distress continued to increase.

05-96, Ms. Carol Miller, Sr. Plant Manager requested that I be reassigned to another location. I was assigned to the First Floor, in the most sensitive units in the Oakland Plant. I felt as I was being punished for trying to fight for my rights. Alsom no reasonable person in a civilized society should be expected to endure the pain, suffering, humiliation and extreme emotional distress that I have been forced

to endure.

06-18-96, I requested to see Mr. Griffin, he did not respond to my request. The continued pattern of abuse, since 1991. (See exhibits #9, #10 and #18).

06-25-96, (see exhibit #19)), another example of the manner in which they caused me emotional distress by forcing me to work large volumes of using a small number of employees. Also, see exhibit #28).

Exhibit #29, will show the number of units that I was required to cover, 120, 180, Express Mail, outside pickup, outside cutting for dispatching to the trucks and two (2) jitney operators were assigned. On 07-30-96, this was done with eighteen (18) employees.

06-26-96, I requested to make an appointment with the NAPS representative after I was not given an opportunity to be heard by Mr. Griffin, SME, a continues pattern of abuse since 1991. (See Ex #20).

06-30-96 & 07-01-96, I submitted another request pleading for more employees to process the large volumes of mail that I was required to process the large volumes of mail that I was required to process. However, my supervisors continued to move the employees to Joe Perkins unit and advise him to send them to my unit. Another male supervisor who was favored over me, and he is also younger. Discrimination and sexual harassment, as they continues to cause me emotional distress. (See exhibits #21, #22 & #23).

07-23-96, another request to speak to a NAPS representative an I had not been heard to date. (See exhibit #24).

08-12-96, Another request to be heard, this request to see Carol Miller, Sr. Plant Manager. I was not heard by Ms. Miller. (See exhibit #25).

I felt ill, as if I was totally set aside, upper management treated me as if I did not exist.

09-04-96, Mr. Ridgeway smith, instructed me to change the color codes on the mail in, my unit, otherwise he would give me a 5-day suspension. I feel, that was the purpose of my being assigned to the First Floor, to allow them to set me up to be fired. Mr. Smith knew that if I changed the color codes I could be removed from the Postal Service. Yet he did not hesitate to order me to violate postal rules and regulations. (See exhibit #26).

A copy of the EL-328, a guide to EAS performance evaluations,

guidelines which should have been followed by Mr. Cruz and Mr. Griffin. (See exhibit #27)

I went into the office on 06-15-96, and I requested eight (8) hours of annual leave two days in advance. I became ill on 06-18-96 and I requested eight (8) hours of sick leave. Ms. Johnson destroyed the official form 3971, that I had originally submitted and she completed another one and she gave me sixteen (16) hours of sick leave. The aforementioned incident is another example of how my supervisors used any means possible to increase the level of my pain, suffering, humiliation, and to cause me emotional distress. (See exhibit #30). I felt nausea, frequent headaches, body aches, anxiety, unable to eat, sleep or concentrate for long periods of time.

On 09-06-96, Clytee Johnson advised me that I should not sit at my desk while I was working in the 180 unit. I was off for two (2) days, when returned to work, my desk had been thrown out on the Platform. A Casual employee went outside and she located the desk and the personal items that were locked in the desk, along with other personal official documents that had been thrown out. (See exhibit 31)•

I felt hurt, ill filled with anxiety, total body pain set aside as no other supervisor in the Plant were being humiliated, discriminated against and caused emotional distress the same as I was.

The Casual employee that located my belongings noticed that I was crying when she went out on the dock and located the items. Clytee Johnson, would allow her to be rehired, although I had rated her outstanding on her evaluation. Clytee deemed it necessary to also, punish and cause the Casual employee emotional pain because she had assisted me in locating the items that they had destroyed.

10-96 - 12-97, my supervisors continued to use any means possible to increase my level of emotional distress. I always performed my duties, met on the following dates are more examples of how Sharon Bell continued to discriminate against me, by favoring the male supervisors over me, and sexually harassing me by causing me emotional distress, when she continued to force me to work large volumes

of male with a small number of employees. The pressure of knowing that I was required to work all of the mail which contained the current color code, otherwise disciplinary action would be taken against me. Mr. Griffin discriminated against me, sexually harassed me and caused me emotional distress because he allowed Sharon Bell and all other managers named to pressure me. See exhibit #2. An excerpt from the management training manual stating that when they inflict emotional distress on an employee that is sexual harassment and the Postal Service is liable for punitive and compensatory damages.

The dates are: 01-18-98, 10-25-98, 02-15-98, 02-21-98, 03-03-98, 03-19-98, 03-22-98, 03-23-98, 04-28-98, 04-29-98, 04-30-98, 05-06-98, 05-07-98, 05-10-98, 06-15-98, 07-13-98, 07-20-98, 07-28-98, 07-29-98, 08-09-98, 08-19-98, 09-17-98, 09-20-98, 09-21-98, 10-06-98, 10-14-98, 10-18-98 and 10-25-98. See exhibit #32

Sharon Bell and Nathan Griffin called me into the office advising me that my work performance was unacceptable, although I was far exceeding my goal. I had been forewarned that disciplinary action would be taken if I did not meet all goals set. The employees in the unit would work extra hard to ensure that I meet my goals, by working short, the coders staying on the console the full tour, etc.

On 03-03-98, fourteen (14) employees were assigned to the 180 Opening Unit to process the mail. Nine (9) casuals were moved from the unit leaving five regular employees. They processed 1,360,728 pieces of mail. See exhibit #33.

On 03-19-98, the volume of Mail in the Express Mail Unit increased due to the UPS strike. We processed over ten (10) thousand pieces of express mail in addition to the 2,484,864 pieces that were processed in the 180 unit. See exhibit #34.

On 05-06-98, we processed 3,109,06 pieces of mail using fourteen (14) employees. See exhibit #35.

On 07-13-98, ninety seven (97) employees were assigned to the 044/043 unit Joe Perkins Unit. Fifteen (15) were assigned to process the mail in the 180 unit. Two Jitney Operators, one (1) employee assigned to pick up the

in the outside drop boxes. Twelve (12) employees who processed the mail. We processed 1,683,302 pieces. See exhibit #36.

On July 28, 1998, fifty-five (55) employees were assigned to Joe Perkins

Unit 044/043, and twelve (12) employees processing mail in the 180 unit. We processed 2,182,250 pieces. See exhibit #37.

On July 29, 1998, forty-two (42) employees were assigned to Joe Perkins unit 044/043 manual cases. Seventeen (17) were assigned to the 180 unit. We processed 2,105,254 pieces. The number of pieces processed daily indicated the current mail volume on hand by color code. My goal is to process all current mail for each day. Please note the number of Casual employees who were assigned to the unit and the number who actually worked in the unit. Eighteen (18) assigned; five (5) worked. See exhibit #38. On 08-08-98, eighty (80) employees were assigned to 044/043, Joe Perkins unit. Twenty-one (21) employees who processed mail were assigned to the 180 unit. We processed 3,037,572 pieces of mail. This continued discrimination, sexual harassment and their intentionally causing me caused me pain in my temples, headaches, stomach pains nausea; filled with anxiety. (See exhibit #39).

Appendix H

EXHIBIT #82-A
UNITED STATES DISTRICT COURT OF THE
NORTHERN DISTRICT OF CALIFORNIA

JOHNNIE L. BROWN,
Plaintiff

V.

JOHN E. POTTER,
POSTMASTER,
GENERAL

Defendant

EEOC

Case#220-AO-51845
220-AO-5202X

Agency #1F-946-0051-99
1F-946-0028098
CIVIL LAW SUIT

1. Johnnie L. Brown, declare as follows:

1. I was previously employed as Supervisor, Distribution Operations, EAS-16, at the Oak land Processing and Distribution Center, I was employed by the United States Postal Service for over thirty (30) years, from August 1966 to August 2000.

2. My last day worked was August 18, 1999. I was absent from duty for the period of August 8, 1999 to August 2000 on disability. Dr Jeanne L. Rivoire, PhD, California Licensed Psychologist's report will show that I was totally disabled from my job at the Postal Service.

3. I have personal knowledge of the facts stated in this declaration and I would and could competently testify to those facts if requested to do so.

4. I was assigned to the international Mails Section from February 1990 through May 3, 1996.

5. The chain of emotional distress caused by my supervisors began With Mr. Carlos Cruz, on 03-09-91; when he came into the office and yelled At me in the presence of other office staff members. Two (2) employees Who witnessed the incident gave statements. See exhibits 43 & #4,

6. On 03-16-91, Mr. Cna7 refused to evaluate me, he designated his responsibility on Bill Lewis and Louis Buckinham, who were the same level as I was. LAS-L6, Mr. Cruz was on duty, and as my supervisor he was responsible for

evaluating me. See exhibit A6, a copy of the payroll journal, and the performance evaluation signed by Mr. Bill Lewis. Also, See EL-328, part 41, Section #4, which contain rules and regulations showing that it was Mr. Cruz responsibility to evaluate me. I requested a second review of my merit, because I felt that I should have received a higher rating as I was meeting and exceeding Wei's goals. He did not respond to my request, I felt ill hurt, my body was filled with pain. See exhibit 7.

7. Since Ms. Cruz refused to evaluate me, it was Mr. Griffin's responsibility to either evaluate me or instruct Mr. Cruz to evaluate me. I Submitted a request to Mr. Griffin, he did not respond to my. See exhibit #9. EL-32R contains rules and regulations that Mr. Cruz and Mr. Griffin should have followed, when I requested a second review. They Did not respond to my request. I felt mentally drained , unable to eat sleep Or concentrate for long periods if time. See exhibit #27.

8. On 04-24-91, 06-23-91, I submitted a letter to Mr. Griffin in regards to a second review of my merit. He did not respond to my request. See exhibit #11. I felt humiliated, ill.

9. Ms. Flossie Morris yelled at me in a meeting while they were discussing an employee who worked for me. See Johnny Scott and William Sutton's declaration. I felt hurt empty, filled with anxiety.

10. On 11-24-91 Ms Morris called a meeting and belittled and harassed me before a group of employees, Ms Morris and Mr. Cruz continued to harass me and to continue to cause me emotional distress. I felt hurt cried a lot, nausea.

11. On 05-14-92, Mr. Cruz informed OWCP that I only had twelve (12) employees that were assigned to my unit. In fact I had twenty-eight Employees that were assigned to my unit. Mr. Cruz had moved the Employees to other units so frequently until he did not remember how many Employees that were assigned. See exhibit #13. The employees Assignment log which shows the number of employees that were assigned to my unit. See exhibit #14. I felt ill, nausea.

12. On 05-03-93 Ms. Millie Watson stated that (while we were in a Meeting with the employee) the employees should not work hard and that I should not expect them to work hard. Since Ms. Watson had allowed them to believe that it was not necessary for them to maintain their productivity goals, it was difficult for me to get the job done.

Although, Ms Watson had set me up to fail, she expected me to meet her goals and to continue to move the mail in a timely manner. The level of emotional distress continued to increase by Ms. Watson. I felt hurt, ill, empty.

13. On 02-29-94, I filed an EEO complaint as the emotional distress was on after Ms. Watson had set me up to fail. She also, created a stressful work environment for me to work under by her negative influence which Was passed on to my subordinates. I felt hurt, humiliated, filled with Anxiety, had frequent headaches and nausea. See exhibit 415.

14. From 03-29-94 to 05 03-96, Ms Watson continued to cause me emotional distress by holding meetings and humiliating me in the presence of the employees, I felt empty, total body pain. Headache nausea. See exhibits #15, #16 & #17.

15. After I had filed a complaint, for retaliation and reprisal, I was moved from the International Mails unit where I had worked for over six years to the First Floor in the most sensitive unit in the Oakland Processing and Distribution Center. I felt as if I was being punished for trying to fight For my rights. I felt pain and humiliation, unable to eat and sleep at times.

16. On 06-18-96 and several other occasions I requested to see Mr. Griffin, he did not respond to my request. The continued pattern of abuse, since 1991. See exhibits #9, #10& #18.

17. After I was assigned to the First Floor, The emotional distress continued, I was forced to work large volumes of mail with a small number of employees. See exhibit #28. I felt ill, filled with anxiety.

18. I was also, required to cover more units than the other supervisors, Operations 120, 180, Express Mail. Outside Pickup, Outside Cutting Ring for dispatching to the trucks. See exhibit 29.

19. From 06-25-96 to 08-12-96, I continued to submit my request for help from Ms. Clytee Johnson, Mr. Griffin, the NAPS Representative and Ms. Carol Miller, Sr. Plant Manager, to no avail. See exhibits #19, 20, 21, 22, 23, 24 & 25.

20. On 09-04-96, Mr. Ridgeway Smith, who was a Senior, Manager Distribution Operation on another tour. He instructed me to change the color codes on the mail in the 180 operation, or he would give me a 5-day suspension. Mr. Smith knew that if I changed the color codes" would be removed

from the postal service. (fired). Yet he did not hesitate to order me to violate postal procedures.

20.. Ori 09-06-96, Ms. Clytee Johnson advised me that I should not sit at my desk while working in the 180 Opening Unit. After I refused to stop sitting at my desk, because the other supervisors were sitting at their desks. Ms. Johnson had my desk thrown out. In addition she destroyed the official form 3971 when I had requested annual leave and changed it to sick leave. See exhibits #30 and #31. I felt nausea, frequent headaches, body aches, anxiety, unable to eat or sleep for long periods of time.

21.. During the period of 10-96 to 12-97, my supervisors and Mr. Griffin continued to use any means possible to cause me emotional distress. Although, I performed my duties in an outstanding manner and I met and exceeded my goals.

22.. On 01-18-98 to 10-25-98, Ms. Sharon Bell continued to discriminate against me, by favoring the male supervisors over me and sexually harassing me by causing me to work large volumes of mail with a small number of employees. The pressure of knowing that I was required to work all of the mail in the 180 Operation which contained the current color code, otherwise disciplinary action would be taken against me. Mr. Griffin discriminated against me, sexually harassed me and He caused me emotional distress because he allowed Ms. Bell and the other supervisors named in this complaint to discriminate against me and harass me. See exhibits #2 & #32. Exhibit #2 an excerpt from the management training manual states that when managers intentionally inflict emotional distress on an employee that constitutes sexual harassment and the Postal Service is liable for punitive and compensatory damages. I felt hurt, ill, and humiliated.

23. During the period from 01-98 to 12-98, I was continually forced to work large volumes of mail with a small number of employees. Example on 03-03-98, fourteen (14) employees were assigned to the 180 opening unit, nine (9) casuals were moved to other units leaving five (5) regular employees. We processed 1,360,728 pieces of mail on that date. See exhibit #33. We processed over one million pieces of mail daily while I was assigned to the 180 Opening Unit.

24. During the months of July and August 1998, I personally went into Joe Perkins unit (044/043 and I counted the employees that were assigned to his unit. Because I knew

they were deliberately over staffing his unit and forcing me to work with less employees. Example on July 13, 1998 ninety-seven (97) employees were assigned to his unit verses fifteen (15) that were assigned to my unit for processing the mail and two others, one (1) for jitney operator and one (1) for outside pickup. See exhibits #s 36, 37, 38, 39 & 44. Since they continued to discriminate against me sexual harassment me

And their intentionally causing me emotional distress, I felt pain in my Temples and I had frequent headaches and stomach pains, nausea, and I was filled with anxiety.

25. On 11-21-98 I submitted my request to Ms. Sharon Bell on a PS form 3971 asking to use personal leave. My request was denied, although the other supervisors in my unit were allowed to use personal leave. See exhibit #42. Also, on May 29, 1997, Ms. Bell issued me a letter of warning for failure to report an accident in a timely manner, although I had reported it on the same day. In addition, she used the accident and the leave that I had used to deny my Eva pay. Ms. Bell erred when she took that action as the accident did not relate to my work performance and the leave was Related to an on the job injury and could not, under correct postal Procedures be used against me, as I was covered under the family medical leave act. See exhibit #79-C.

27. In addition, on 02-03-99, Ms. Bell came into my unit and she left a note which stated "Stop working the pallets and work the sacks of mail only. And she also, accused me of not meeting my goal, when in fact I had Exceeded my goal. When I received Ms. Bell's note I submitted a request to Mr. Griffin and Ms. Carol Miller, asking them to stop Ms. Bell from Harassing me. They did not respond to my request I felt ill, hurt, I had a Headache and a stomach ache and I was filled with anxiety. See ex. #76.

28. On 10-17-98, Louis Buckingham and I exchanged jobs, He was assigned to the 180 Opening Unit and I was assigned to SPBS #1. During the same week that we were reassigned Ms. Bell assigned twenty-eight (28) casuals to the 180 unit as opposed to the two (2) that were assigned to my unit. Which was added to the twenty-four (24) regular employees that were assigned to the 180 unit. Joe Perkins were assigned ten (10) casuals, I was given three (3). See exhibit #45. I felt ill nausea filled with anxiety.

29. On 10-20-98, I requested to see Mr. Griffin, he did not respond to my request. This is his continued pattern of abuse to me

and his discrimination against me and his causing me emotional distress. I felt nauseated. See exhibit #46.

30. On 11-22-98, I wrote a letter to Vail Teal, NAPS representative, I also, wrote to Kathy Howley, District Manager, Customer Services & Sales, and also, I wrote to Bill Henderson, Postmaster General, regarding the problems of Mr. Griffin and his managers discriminating against me and sexually harassing me by their intentional infliction of emotional distress on me. They did not respond to my request for help. See exhibit #47. I felt totally left out and ill and was filled with anxiety.

31. In addition after I was assigned to the SPBS machine over 50% of my employees were moved to other units and I was yet forced to work large volumes of mail with a small number of employees. Examples, on 11-22-98, 11-23-98 and 11-24-98, I was personally forced to work both sweep sides of the SPBS machine and dump mail on the belts, because Mr. Griffin and Ms. Bell would not assign adequate employees to my unit. See ex. #48.

32. On 08-16-99, Mr. Griffin presently came into my unit and instructed his employees who were assigned to my unit to go up to the Second floor and push the large and heavy containers of mail to the First Floor. Although, he had been advised that Ms. Colbert's unit was responsible for working fifty percent 50% of the sacks of mail he did not instruct her employees to assist in moving the mail. See exhibit #77. I felt ill, nauseated and with total body pain.

33. During the period of 11-88 through 08-99, I was continually forced to work large volumes of mail with a small number of employees and I was forced to help the employees work or disciplinary action would have been taken against me and possible removal from the Postal Service. I felt ill, hurt and humiliated. See exhibits #s 49 through 62.

34. On 05-19-99, Ms. Clytee Johnson instructed my jitney operator to go to the Second Floor and bring sacks of mail to SPBS #1, to be worked out of date sequence, while there were delayed mail already staged in the unit. In addition, neither Mr. Griffin, nor Ms. Bell or Ms. Johnson asked Arlene Colbert to work the sacks of mail although, Ms. Miller had instructed her to help work the sacks of mail. They continued to discriminate against me and cause me emotional distress. I felt ill, headache and stomach ache filled with anxiety. See

exhibit #63.

35. On 08-04-99, Ms. Gray instructed me to give Louis Buckingham my Jitney, although there were other jitneys that were available. The managers continued to cause me emotional distress. And discriminate against me. I felt ill hurt filled with anxiety. See exhibit #72.

36. On 08-12-99, I submitted a request for my SDO change for the second time and also addressed the fact that Ms. Gray had not been Answering my page when I try to contact her. And there is no valid reason Why my scheduled days off could not have been changed. Because Victor Bolon 204-B could have covered my unit for me as Ms. Gray sends him to other units for relief. And Mr. Griffin stated in his affidavit if there was Coverage he had no problem with the change off days. Mr. Griffin's nondiscriminatory reasons were pretext for the fact that he had actually discriminated against plaintiff. In the Molloy Blanchard 115 F-3d 8674 FEP176 l* Cir 1997 case' the plaintiff, a female police officer was suspended by her chief for actions where her male counterparts would not have been suspended. The courts held this was discrimination as the chief had discriminated against the female officer. Also, on 07-20-99, I Paged Ms. Gray all day and she would not answer my page. answer my page Gray all day and she would not I needed additional employees as I was working short. I felt ill filled with anxiety, See exhibit #73.

37. On 08-15-99, I submitted a statement advising Mr. Griffin that Ms. Miller had instructed me to split the sacks if mail with Arlene Colbert a Caucasian female supervisor, However they would not allow her to assist me in working the sacks of mail. The sacks of mail contained mostly loose mail that was not designed to be processed on the (SPBS). Small parcel bundle sorter. The employees were required to take the loose mail of the conveyor belts and place it in other containers to be worked in other units. It was almost impossible for them to remove the mail and keep enough mail on the belt for the coders to code. Therefore, many times I was forced to work on the belt with the employees. I felt hurt ill filled With anxiety. See exhibit #75.

38. The supervisor's schedules shows that Louis Buckingham and Francis Webb's days of were changed. Ms. Gray stated that she did not change their days off. That is no excuse, because Mr. Griffin is allowing the managers to

discriminate against me and to deny all my request. I felt sick, nausea filled with anxiety. See exhibit #74.

39. On 08-16-99, Mr. Griffin personally came into my unit, sexually harassing , showing discrimination and causing me emotional distress. See Exhibit #77. I felt hurt ill, as if I was singled out and caused to fail.

40. I submitted a request to Mr. Griffin. Asking him for a Light Duty assignment. He stated, Please be advised that your request is denied. There are no hours in a supervisor capacity that is not stressful and there are no hours that do not request focus on the operation. However, Mr. Griffin did allow Arlene Colbert to work on a light duty assignment, working in the office, updating the 3972 files. I could have worked that job, because I have the knowledge and I have more experience than Ms. Colbert. I felt hurt set aside. See exhibit #78.

41. I sustained an injury, on 08-18-99, I have been off from that date to present. I was totally disabled from my job at the Postal Service. See exhibits #79 and #84.

I have reviewed this declaration and declare under penalty of perjury under the laws of the United States that the foregoing is true and accurate to the best of my knowledge.

Executed on this 30 day of September, 2003 in Oakland, California.

EXHIBIT #82-E

Johnnie L.
Brown, Plaintiff
4851 Walnut Street
Oakland, CA
94619-2558 (510)
436-5665

UNITED STATES DISTRICT
COURT FOR THE
NORTHERN DISTRICT OF
CALIFORNIA

Johnnie L.
Brown,
Plaintiff

HOC Case#220-/W-51 84X
220-AO-5202X

V.
John E. Potter,
Postmaster
General
Defendant

Agency #1F-946-0051-99
1 F-946-0028-98 CIVIL
LAW SUIT

I, Ella Murray, declare as follows:

1. I was previously employed as a Mail Handler, PS-4, at the Oakland Processing and Distribution Center, Oakland California.
2. I have personal knowledge of the facts stated in this declaration and I would and could competently testify to those facts if requested to do so
3. I worked under Ms. Brown's supervision during the period of April, 1991 - May, 1992.
4. During my role as Mail Handler, I recall the following incidents.

I observed Ms. Brown when she went to her regular supervisors meetings . and after she left the meetings. I saw her crying and she looked depressed I was also, present in the bathroom on occasion when I heard employees talking about the unfair treatment that Ms. Brown's supervisors had forced her to endure. I also, saw the petition that forty-five (45) employees signed against her, as they asked me to sign the petition, but I refused to sign it.

5. I am also, aware of the continued emotional distress that her supervisors are continuing to cause her. She have talked to me on a daily basis I have observed her crying many times since she have been assigned to the first floor. Several times I have followed her to the ladies lounge to give her moral support. In addition, I am concerned about her health, as I have observed her taking prozac which was prescribed by her doctor. I have also, seen her facial expression (as if her body was filled with pain), her emotional state (crying upset, nervous, skipping meals, restless etc).
6. When she fell on the job in August, 1999, I went to Kaiser Hospital Emergency room with her (08-18-99). After her supervisor approached at her desk and she fell and sustained an injury. She was in the emergency room for over five (5) hours and her supervisor did not accompany her to the hospital, as they usually do when an employee sustains an on the job injury.
7. In addition they sent a representative to the hospital after she had been there for several hours to interview Ms. Brown, which also caused her more emotional distress. I have reviewed this declaration and declare under penalty of perjury under the laws of the United States that the foregoing is true and accurate to the best of my knowledge.

Executed on this 20 day of September, 2003, in Oakland California

s/
Ella Murry

Appendix I

EXHIBIT #82-B

**UNITED STATES DISTRICT COURT NORTI-ERN
DISTRICT OF CALOFORNIA SAN FRANCISCO
DIVISION**

JOHNNI E L. BROWN.

Planiff

V.

JOHN E. POTTER,

**POSTMAS
TER
GENERAL**

Defendant

I, Tante Robinson declare as follows:

1. I was previously employed as a Supervisor,. Processing and Distribution, EAS-16, at the Oakland Processing and Distribution Center. Oakland, California.

I was employed by the U. S. Postal Service for over thirty (30) years, from May 12, 1966 to March, 2000.

2. I have knowledge and I am aware of the facts stated in this declaration and I would and could competently testify to those facts if requested to do so.

I was assigned to the platform area for several year. When I was assigned to the Platform area, I worked closely with Mrs. Johnnie L. Brown; and she constantly told me, how she was treated different than the other supervisors in her unit, and how she submitted several request to Mr. Griffin for his assistance and he did not respond to her request.

5. I have personal knowledge of how stressed and humiliated Ms. Brown was when those incidents occurred, as she told me about things that was happening to her, she would be in tears.

6. Ms. Brown was assigned to the Small Parcel Bundle Sorting Machine (SPBS), which was designed to process small

parcels and bundles.

7. While I was assigned to Acting, Manager Distribution Operation (AMDO), it was part of my job to have my staff dispatch bundles of magazines, flats and small parcels to Ms. Brown's unit.

8. She told me that Mr. Nathan Griffin, Sharon Bell and Edna Gray would not allow her to process the bundles and small parcels, that was staged in her unit. Several times I asked her why there was delayed mail in her unit, and she was working current mail. She told me that she had been instructed to work sacks of mail only. The sacks of mail contained mostly loose mail that was not designed to be processed on the SPBS machines, and the dates were current on the sacks. Mail as opposed to the pallets of flats, they were delayed.

9. The employees were required to take the loose mail of the SPBS conveyor belts' and place them in other containers to be dispatched to other units. Since only one mail handler was assigned to each conveyor belt it was almost, impossible for the employees to take the mail of the belt, fill and dispatch the full containers and keep enough mail on the belt for the coders to code. Therefore, many times I observed Ms. Brown working on the belt with the mail handlers to ensure that she met her goal of 1000 pieces per hour per console. I told her that she wasn't in compliance with postal regulations and she told me that she was afraid that the postal managers would try to fire her if she did not meet her goals.

10. I am 'aware that Sharon Bell issued a letter of warning for Ms. Brown's accident and she used it to deny her EVA pay.) have personal knowledge that the letter of warning for an accident did not relate to Ms. Brown's work performance. Therefore, it should not been used to deny her Eva pay. Ms. Brown's work performance should have been rated for the Eva. Also, family medical leave should not be sited when taking diplomacy action against an employee. I have personal knowledge of the large volumes of mail that Ms. Brown processed when she was assigned to the 180 Opening unit, because she announced the volume that she processed over the intercom. Also, since I was in charge of the platform operation, I was aware of the volume of mail that

was received by her unit because that mail came from my unit.

12. Ms. Brown also, talked to me about the fact that Ms. Bell would not allow her to use personal leave when requested, but her other EA:S-I6 supervisors were allowed that privilege but she was not.

13. I have personal knowledge that due to postal procedure Sharon Bell.

Edna Gray and Nathan Griffin should have been aware of Ms. Brown's EEO activity.

14. Since I am an experienced supervisor and have knowledge of the correct postal procedures as it relates to discipline. I know that Ms Bell erred when she used a letter of warning for an accident and Ms. Brown's absences which was family leave to deny her Eva pay. , Since her absence was due to an on the job injury and the injuries were covered under the Family Medical Leave Act, those items cannot, under correct postal procedures, be used against Ms. Brown.

15. I have personal knowledge of the excellent manner in which Ms. Brown performed her duties, therefore I cannot comprehend the fact that Ms. Bell rated her unacceptable, and unsatisfactory on her merit, and denied her Eva pay. The items that she used was unrelated to the action that was taken. I have observed Ms. Brown's performance and I have personal knowledge that she performed over and above that which was required of her as she met and exceeded her goals.

16.. Ms. Brown told me that Ms, Carol Miller, who was the plant manager instructed the supervisor of SPBS Machine #4, Arlene

Colbert to process fifty (50) percent of the loose sacks of mail. However, Sharon Bell and Edna Gray would not allow Ms. Colbert to help, Ms. Colbert is a caucasian female supervisor..

17. Ms. Brown told me of how the postal managers instructed her to Change the color codes on the mail. They know that was against postal procedures. She came to me in tears as she believed that they were trying to have her violate postal procedures so she would loose her job.

18. I am aware that Ms. Brown's desk was thrown out

because she Stated that Clytee Johnson did not want her to sat at her desk. I noticed that . Other supervisors in the unit sat at their desk.

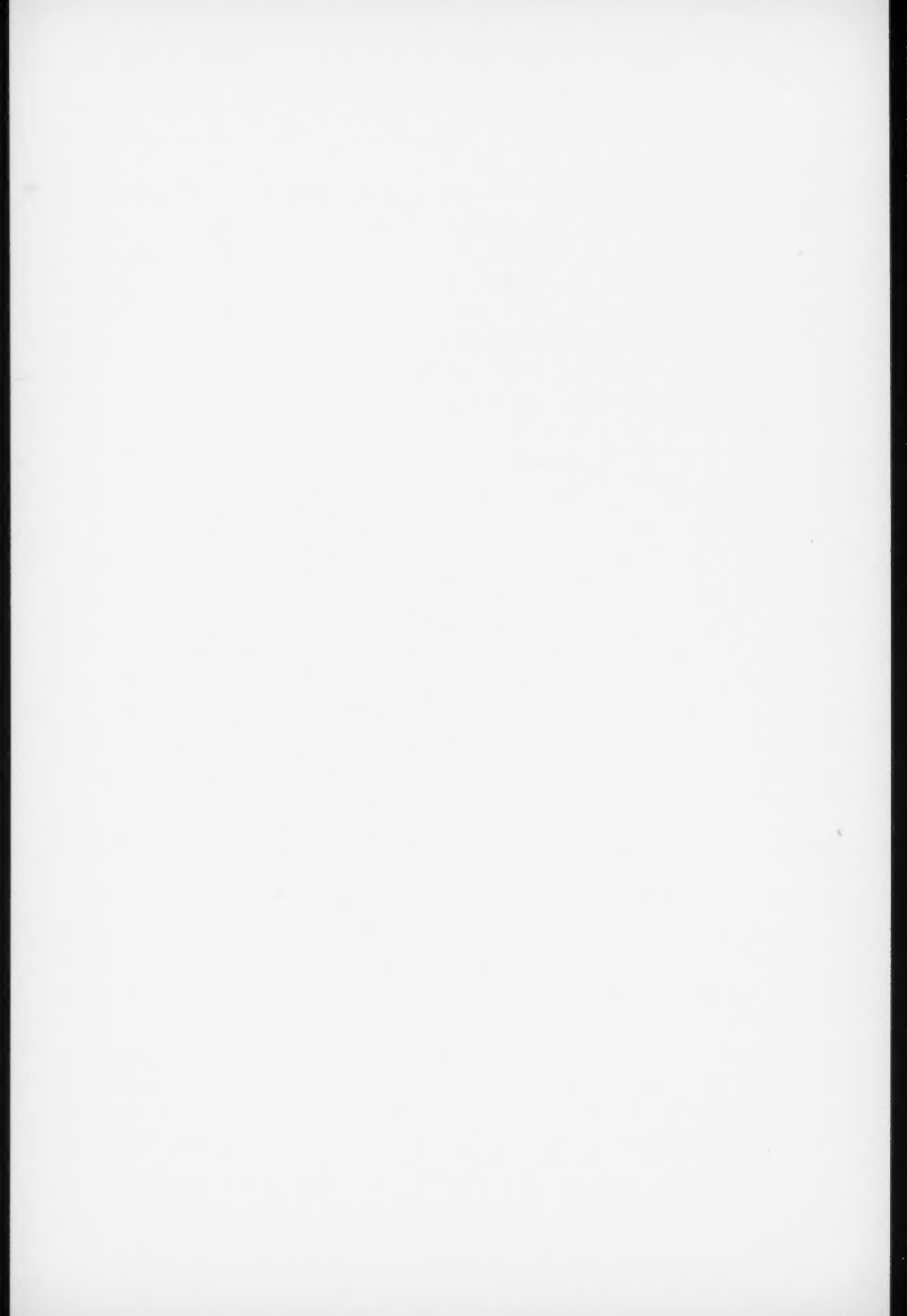
19. I have personal knowledge that when Luis Buckinham and Ms. Brown exchanged jobs, she was moved to the SPBS machine and he was move to the 180 opening unit.

I have reviewed this declaration and declare under penalty of perjury under the laws of the United States that the fore going is true and accurate to the best of my knowledge.

Executed on this 22 day of September, 2003, in Stockton California.

Dec. of Tante Robinson in support of Johnnie L. Brown

s/
Tante Robinson



Appendix J

EXHIBIT #82 - C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA SAN
FRANCISCO DIVISION

Johnnie L. Brown,

Declaration of Samuel
Bobo Sr. In Support of
Plaintiff

Plaintiff

Case NO: CO3-01248MJJ

V.

John E. Potter,

Postmaster
General
Defendant

Samuel Bobo Sr., declare as follows:

1. I am self employed and I am the Pastor and Founder of the Queen %/emorial Church of God In Christ, 5918 Foothill Blvd., Oakland, CA 94621. I have been ministering at the church for the past ten years.

2. I have personal knowledge of the facts stated in this declaration and would and could competently testify to those facts if requested to do so.

3. I was hosting a baptismal service on and about April 8. 2000. When a portion of the members of my church were attending. The Plaintiff Johnnie L. Brown, who is a member of my church in good standing and my sister, who was baptized.

4. After an incident had' occurred with Jane Doe, one of the members. I heard Ms. Brown speaking in a very loud voice and I saw her walking back and forth in the parking lot at the church, stating that Jane Doe had Held her handbag and bible While she were being baptized but she refused to return her bible. I was amazed and surprised when I heard her speaking In that loud

tone as she is always a very soft spoken person

6. In addition, there was a difference about her facial appearance and her mannerism that I cannot explain. Also, I could not have imagined that she would behave in that manner as she is a very private, prim and proper Individual.

I have reviewed this declaration and declare under penalty of perjury under the laws of the United states that the foregoing is true and accurate to best of my knowledge.

Executed on this 2 day of May, 2004 in Oakland California.

s/
Samuel Bobo, Sr.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF
CALIFORNIA SAN FRANCISCO,
DIVISION'

Johnnie L. Brown

Plaintiff

Declaration of Felicia
Rumsey In Support of
Plaintiff

V.

Case No. CO3-12481\1U

John E. Potter,
Postmaster
General
Defendant

Felicia Rumsey declare as follows:

1. I am presently a student at Cal State Hayward.
2. I have knowledge and I am aware of the facts stated in this declaration and I would and could competently testify to those facts if requested to do so.
3. I am a member of the Queen Memorial Church or God In Christ and the Plaintiff Johnnie L. Brown is my grandmother.
4. I was attending a baptismal service on and about April 8, 2000, when I saw Ms. Brown walking back and forth in the church parking lot. And she was speaking in a' very loud voice, stating that Jane Doe asked her if she could hold her handbag and bible while she was being baptized. After about thirty (30) minutes had passed she sent plaintiff's handbag back by another member. However she did not return the bible.
5. Ms. Brown's entire facial appearance changed and she began to speak louder and louder. She did not stop until I stated, grandmother, are you aware that you are very loud? After I made that statement, she seemed to awaken out of a deep sleep; yet she was awake, but her behavior was unnatural. She calmed down and she stated, I did not know that I was loud.. She was shaking

and she was embarrassed.

6. My grandmother is a very professional, poised and private person and under normal circumstances she would have never behaved in that manner before all those people in the parking lot at church.

I have reviewed this declaration and declare under penalty of perjury under the laws of the United states that the foregoing is true and accurate to .he best of my knowledge.

Executed on this 2nd day of May 2004 in Oakland California.

s/
Felicia Rumsey

Appendix K

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

2

SUBJECT: Johnnie L. Brown, SSAN: 429-70-0958 August 1, 2005

It is hoped that the above information will be helpful to you in
helping Ms. Brown

Sincerely,

S/
Jeanne L. Riviore, PhD.
California Licensed Psychologist

CF: Ms. Johnnie L. Brown

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
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September 15, 2004

Mr. Curtis G. Oler, Esq.
P.O. Box 15083
San Francisco, California 94115
DOI: Cumulative, with
final date of 8-18-99

RE: **Johnnie L. Brown**
DOB: 01-05-38
SSN: 429-70-0958

(Continuation of Hazen stemming from her conditions of
employment at the United States Post Office through 1999.)
Dear Mr. Oler:

As you are well aware Ms. Brown continues to be harmed by
her intense and long experiences at her place of work for the United
States Post Office.. This has been addressed in my report to you
dated May 12, 2004, on pages 02-09. Also, pages 09-14 address
her present condition. Pages 28-30 address the limits of her
current Activity Functioning.

A brief review of this information reveals that she continues to
have episodes that remind her of her harm. Whenever she is
involved in a situation that induces stress she just starts
yelling and then dissociates and does not remember the event.
This has continued on since she has left her position with the Post
Office and continues to do so even to the present time. Ms. Brown
continues to have problems of handling stress very poorly. In 2004,
she continued having periods of

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2

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 Sept. 15, 2004

disturbances when faced with intolerable situations. e.g., she tried to get records from the Post Office in May, 2004. She was denied and after an hour to an hour and a half, she started yelling at a loud level. There was a threat of calling Security when she finally came to. She was so embarrassed. Another example occurred in September, 2004 when someone set in her seat at church. Ms. Brown states that she had always sat in that seat and she was very upset. Again, she began to yell and again she dissociated. When she came to herself, the ushers were separating the two women. She apologized, but she was so embarrassed. She states that all she remembers is yelling at "Edna Gray" who gave her so much trouble at her job.

As can be seen, the harm to Ms. Brown continues. The harm that was inflicted upon her does indeed continue to harm her life as episodes reflecting her experiences at her job continue.

Ms. Brown also continues to suffer from problems with memory, attention, and concentration as noted on pages 09-12 of my report to you dated May 12, 2004. It should also be noted that she continues to suffer in these areas and often finds herself continuing to have difficulties.

As to her Social-Emotional functioning level, it still is very constricted and she often gets into altercations of a verbal nature. Of interest is the fact that these always seem to involve her reliving events that occurred at her job. Perhaps this area is one of the most harmed

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3

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 Sept. 15, 2004

and includes feelings of depression, anxiety, anger and even pain. Incidentally, she still has problems sleeping after experiencing terrible nightmares. She also continues to have flashbacks, intrusive thoughts, and perceptual difficulties. She remains hypervigilant.

Ms. Brown still continues to have problems in how to carry out her activities. This is called Executive Functioning. She has problems in making decisions, carrying out plans, self-monitoring, and sequencing. To her credit, in the last year or so, she has shown improvement in this area.

As to Ms. Brown's current level of activity functioning, this is addressed in, my report dated May 12, 2004 on pages 28-30. • As an overview statement, she remains much the same. She has serious sleeping problems. She has problems with digestion, her personal hygiene remains restricted and her daughter often still has to help her. She has so little energy and bathing or showering remains difficult for her. Dressing is still a problem for her and she requires help in this area. Although she has always liked to cook and prepare food, she no longer cares to do so and has little to no interest. She still does not go places like she did before her stress and all of the problems which she suffered from her treatment at her place of work. Her social functioning continues to be flawed because of her problems with interacting with people that often seem similar to the ones she suffered at her place of work at the United States Post Office.

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4

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 Sept. 15, 2004

It should also be noted that her basic diagnoses remain the same, that is: General Anxiety Disorder (there are many features of Post Traumatic Stress Disorder) (DSMIV: 300.02) and Major Depressive Disorder (DSMIV: 296.33). There are Associated Features of Lowered Intellectual Functioning, Social Interaction Problems, Social Withdrawal, and Pain and Suffering. (For Axis II, III, IV, and V, see pages 26-27 of my report to you dated May 12, 2004. It should be noted that Ms. Brown remains essentially the same as in that report.)

It is hoped that the above information will be helpful to you in helping Ms. Brown in attempting to seek remedy for her harm. It should also be noted that the information noted above and the information contained in the report pages referred to above will be used in my testimony at her trial, recently set for October 25, 2004.

Sincerely yours,

S/
Jeanne L. Riviore, PhD.
California Licensed Psychologist

CF: Ms. Johnnie Brown

JEANNE L. RIVOIRE, Ph.D.
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1970 Broadway, Suite 610
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September 19, 2003

RE: Johnnie L. Brown
DOB: 01-05-38
SSN: 429-70-0958
File Nr: 94619-131196672
DOI: Cumulative with
final date of 8-18-99

To Whom It May Concern:

Ms. Johnnie Brown remains a patient in this office for her psyche injuries which she received while carrying out her normal and customary work duties for the United States Post Office, Ms. Brown has asked for a brief update of her condition since the primary detailed report of May 12, 2000. This information is being forwarded at her request.

Ms. Brown continues suffering from stress, and severe anxiety with panic attacks, all at the severe level, She also continues to be depressed; however, there has been some improvement to the moderate level. She continues to withdraw from almost all social interaction and she now also suffers from fatigue, loss of energy, and she has little stamina. She now, at times, feels that she will never get her case resolved with the U.S. Department of Labor, Office of Workers' Compensation Programs.

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2

SUBJECT: Johnnie L. Brown, 99619-131196672

Enclosed for your information is the report dated May 12, 2000. Essentially, she is still totally disabled, however, as time progresses, she continues to deteriorate.

It is hoped that the above updated information is helpful. Should further information be needed or be helpful, please do not hesitate to call upon me.

Sincerely,

S/
Jeanne L. Riviore, PhD.
California Licensed Psychologist

JEANNE L. RIVOIRE, Ph.D.
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May 12, 2004

Mr. Curtis G Oler, Esq.
P.O. Box 15083
San Francisco, California 94115

RE: Johnnie L. Brown
DOB: 01-05-38
SSN: 429-70-0958
DOI: Cumulative, with
final date of 8-18-99

Dear Mr. Oler:

Ms. Brown has been seen in this since from late 1999 to the present time. She continues to suffer from illnesses and injuries which received while working at her job with the United States Post Office during the years 1991-1999. She last worked August 18, 1999 at which time she suffered an episode of syncope because of her chronic severe stress due to her working conditions. The stressful working conditions have been described in my report to Jan R. Woods of the U.S. Labor Department in Washington, D.C. which is included with this report, at Appendix A. There is also a Stress Profile of Ms. Brown at App. B.

1.00. Identification of Applicant:

Ms. Johnnie Brown is a sixty-six year old African-American woman and a resident of Alameda County, City of Oakland, and State of California 94619. From August 28, 1965 until August 18, 1999, she

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2

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

has been an employee for the United States Post Office_ For the first five years, she worked as a Distribution Clerk in different units. During the year 1970, she was promoted to Sacksorting Machine Operator. She worked that job for eight years. Intermittently she was detailed through these years as Sack Sortin^g Machine Console Operator. Durin^g the year of 1978, she bid for a job in the Personnel Services Office in the Office Tower. Here she worked in different jobs until 1986. She was a Personnel Clerk and General Clerk in the Safety Office. While working in the Safety Office, she was also intermittently detailed as a Safety Specialist, which was considered a management position. (In 1979 she received an AA degree in Industrial Management from Merritt College.) Durin^g 1986, she was detailed to Acting Supervisor, Mails, where she remains to the present time. Soon she was promoted to Supervisor. She did receive one more promotion when she was designated as Supervisor, Distribution Operations. She does state that throughout this entire period she was never given any disciplinary action for any reason. She claims to have suffered cumulative psychological injuries as a result of events and exposure during the time from 1991 through. August 18, 1999.

2.00. Brief Overview of Ms. Brown's Continuing Harm:

Ms. Brown continues to suffer severe headaches, tin^glin^g in her ears, flashbacks, disruption of sleep, nightmares, intrusive disrupting thoughts, feels demoralized, helpless, and felt light-headed through out the entire year of 2000. In addition, she felt a terrible empty feeling, numbness – flat affect, angry, apprehensive and depressed. She had

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3

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

problems concentrating, attending, planning and organizing. Her self-esteem was restricted while her self-identity was changing from that of a contributing member of the work force to person who no longer was able to compete in the job arena. On many occasions during this year, she felt as if she was going to pass out again and this frightened her. She suffered blurry vision from time to time.

During the year of 2001, she also continued to suffer most of the same symptoms. She found her sleep disturbance was causing her to have a loss of energy and her fatigue was very high. Her anger level was easily triggered whenever she found herself in any situation that caused her to be even minimally frustrated. An example of her sleep disturbance was almost weekly, sometimes daily nightmares. One nightmare was a supervisor yelling at her and pulling her by the arm. An example of her anger level being easily triggered is when she was discussing the terms of an agreement with another person. At this time she became very angry and upset, even yelling. After she calmed down, she realized that she was indeed really yelling at one of her past supervisors at the Post Office. She was so embarrassed. She states she just had to apologize to all concerned. (Note: Misplaced frustration and displaced anger) Another example of her displaced anger occurred in this same year. She was returning items to a store. She forgot her receipt, but still insisted on returning the items. The store would not allow her to return the items without a receipt. This triggered her anger and again she started yelling. Thirty minutes later she

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4

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

came to herself. She did not remember her behavior, and again had to apologize. As can be seen by these two episodes, which represent a multitude of others that also did occur during this year, Ms. Brown's stress level was dangerously high. She still had little to no control and her frustration tolerance was very low. Certainly her executive functions did indeed continue to be severely constricted and under even minimal frustration, dysfunctional. She says during each episode she was always reminded of her long and traumatic experiences at her job with the Post Office.

Ms. Brown continued to be seen throughout the year of 2002. During this year, she was seen usually twice a month, though a few times only once, and upon one occasion, three times in a month. Ms. Brown's frustration tolerance was improving to a very limited degree; however, she had been so exposed for so long to a hostile working environment that she still remained a victim of this long exposure. Her memory as well as her attention and concentration were still limited. She had recurrent distressing dreams; she continued to have intrusive distressing thoughts about her experiences at her place of workplace, i.e., the U.S. Postal Service. Whenever she would receive mail she would be apprehensive, distressed, and almost panicky. She describes feeling dizzy and having blinding headaches and blurry vision whenever her thoughts were involved with or being reminded of her workplace traumas by internal or external stimuli. She still felt like she had been set aside and she felt hopeless. Her perseverance increased. Perseveration in this year increased

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5

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

her executive function problems such as planning, sequencing and monitoring her own behavior. She also continued to be very constricted in her social behavior in a very negative way. Examples of this are reflected in her interactions in social situations. On one occasion, she was coming out of a church and got into an argument with another church member. Ms. Brown started yelling and was most distraught. Again, she came to herself in about thirty minutes, but she did not remember one thing about what had gone on. She states she was so embarrassed. Another example of this same type of behavior was seen in April, 2002. She had been holding some money for her daughter. Her daughter wanted it returned. They got into a yelling match for about five minutes when the daughter remembered that she had already gotten the money from her mother. Ms. Brown became apprehensive, her head hurt, and she could not speak clearly for at least the next thirty minutes and she was shaking all over. This incident was a carry over from the events which occurred in 1999 just before her incident of syncope which occurred when she was at her job. This also reflects her damage with having been so long exposed to such a harmful environment. Her ability to monitor any type of frustrating situation was so injured that she simply is still not responding in an appropriate manner. Another example of the same type of behavior which occurred in 2002 was an interaction at a hardware store when she tried to return merchandise that did not work. In this instance she was told she could not return it because it was

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6

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

used. She asked how she could know it did not work if she did not use it. Eventually this situation was favorable resolved, but not before she had had started shaking, speaking in a very inarticulate manner and becoming dizzy. Again, her long, frustrating stressful experiences had such an influence upon her that any type of frustration was just beyond her control. Once again, she had to apologize for her behavior. She felt so badly that she went home and withdrew for a significant amount of time.

At the end of 2002, Ms. Brown was still suffering from her long exposure to a very hostile, stressful work environment. She had recovered some of her extensive organizational skills; she was able to focus more efficiently, but still not constantly nor at time, adequately. Her social interactions reflected significant injuries from her work environment, and she still was not able to interact with others in a way that she could tolerate even a minimum of stress – because of the carryover of her long, traumatic interactions with managers and supervisors at the U.S. Postal Service. Her flashbacks to the different incidents were now not as often, but often of greater intensity.

In 2003, Ms. Brown still had problems in sleeping for she had many nightmares, often awakened early and could not get back to sleep. Her nightmares, although perhaps somewhat fewer, nonetheless contained subject matter reliving her hostile, traumatic work related experiences. After a nightmare would awaken her, she then could not return to sleep because she would enter into perseverating about her experiences at work. She was unable, upon many occasions, to

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7

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

stop these intrusive thoughts on her own and had to seek professional help.

Her social interactions were still limited. When she did interact, she often would be yelling at the slightest provocation. In other words, a person who had not experienced such long, traumatic stressful events at their place of work, such as had Ms. Brown, would not even be upset. An example of this is again, when she was coming out of church, someone asked her how she was doing and Ms. Brown yelled at her. Later, when Ms. Brown came to herself, she did not even realize that she had been yelling. Once more she was embarrassed and had to apologize to everyone.

Upon another occasion in 2003, Ms. Brown was working with a tenant in discussing reports. She went outside to get a tape measure and when she came back inside she started conversing with the tenant. He told her she had to stop yelling. She came to then. But once again, she did not even know she was yelling. She simply had once again transferred over from her very painful experiences from her job her feelings and reactions to a current situation. That night she had terrible nightmares of a supervisor hitting and stabbing her.

In 2003, Ms. Brown continued having problems in her executive functioning as well as her socio-emotional functioning. She continued to often have periods of perseveration along with flashbacks. Her flashbacks were less frequent, but seemingly more real and intense. These frightened her and caused concern, pain and distress. It seemed as if she was reliving the traumatic incidents that she had experienced while she was working, over and over again. She still felt harmed, and had severe headaches from

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SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

time to time but these were not quite as frequent. She still felt body pain when remembering all of her traumatic experiences. But by and large, she was slowly experiencing a small degree of healing. One area that did not show much improvement at this stage was that of her social interactions that had any degree of the feeling of frustration and stress. An example of this occurred late in October, 2003. She was trying to resolve a problem with the city of Oakland regarding some paperwork. Unfortunately, there was a misunderstanding and Ms. Brown became frustrated and again started yelling. She states she saw two of her supervisors while yelling – but that she did not remember yelling. She again had to apologize to those concerned and went home with a severe headache. The flashbacks of being harassed, humiliated, and disrespected were prevalent over the next few days. She simply is not able to tolerate any frustration in a social interaction situation. Her ability to monitor this aspect of functioning remained, to say the least, limited and the causal agent was specifically her long stressful experiences while working for the U.S. Postal Service from 1991 – 1999.

Ms. Brown has continued to have some problems that are primarily the result of her experiences while working for the United States Postal Services. Her sleep still remains disturbed. Her attention and concentration, even with the slightest stress will cause difficulty in staying focused. Under severe, and even mild, stress upon occasion, her memory will simply cloud and she will have problems even with short term types of these processes. She still suffers headaches, dizziness, and occasionally has spots before her eyes. Her socioemotional

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SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

functioning is still hampered significantly and she often felt helpless throughout these last few years. Whenever Ms. Brown has something internal or external that reminds her of her long and traumatic experiences while working for the United States Postal Service. She will either almost have another episode of syncope or else a panic attack and go into almost a short term fugue.

The above brief review of Ms. Brown's harm is meant to be just that: an overview and certainly brief. It is meant to show that her harm, which occurred between 1991 – 1999 from an extremely stressful working environment, continues on through the present time. She still does not function as she did pre-morbidly. She continues to have significant problems caused by her work environment in the Cognitive, Executive, and Socio-Emotional areas of functioning and will have for the foreseeable future.

3.00. Clinical Findings from the Most Recent Medical Evaluation.

3.01. Mental Status Examination (Dimensions of Ms. Brown's Behavioral Functioning, Taken April, 2004.)

Behavior may be conceptualized in terms of three functional systems: (1) Cognition, which is the information handling aspect of behavior; (2) Emotionality, which concerns feelings and motivation, and (3) Executive functions, which have to do with how behavior is expressed.

Cognitive functions are involved with sorting, combining and relational data. For a very long time after Ms. Brown's episode of syncope and her long exposure to chronic severe

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10

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

stress, Ms. Brown had serious problems in these areas. She had difficulties in sorting materials and data. There were severe difficulties with putting materials together, with data combining and sorting information in a meaningful way. She also had problems with relating data and putting information incoming to her in a prioritizing hierarchy. Presently, if given time and given an almost stress free environment, she is now fairly successful in these areas. Under pressure, she still has, however, significant difficulties. Often, her perseveration problems also will influence her ability to succeed in these areas.

Attention, concentration, and memory are also cognitive functions. It should be noted that these behavioral functions are very complex. Attention is very influential upon memory. Attention, basically relates to a series of processes, however, a clear definition has yet to appear in the literature. Attention usually is conceived of as a system in which processing continually occurs. This processing is very & agile under stressful conditions.

Basically, there are four aspects of attention. They are easily disturbed:

(L) **Focused or Selective Attention** is probably the most studied aspect and the one people usually have in mind when talking about attention. It is the capacity to highlight the one or two important stimuli or ideas being dealt with while suppressing awareness of competing distractions. It is commonly referred to as **Concentration.** (2.) **Sustained Attention or Vigilance** refers to the

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11

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

capacity to maintain an attentional activity over a period of time. (3.) **Divided Attention** involves the ability to respond to more than one task at a time.

(4.) **Alternating Attention** allows shifts in focus and tasks.

As to **concentration functioning** if Ms. Brown is in a relatively relaxed setting, she can stay focused and not allow competitive stimuli to interfere. However, with a stressed environment she is not able to maintain her attention system. She has problems with changing focus once she does get focused. She will also be so highly vigilant that it is as if something in her attention system got stuck. Ms. Brown also has problems in dividing her attention, and she has had problems in alternating her attention for switching from one subject to another. At the present time, Ms. Brown continues to have at least moderate attention system problems in the area for all of her multiple data processing apparently occurs in a hierarchical manner in which the earlier entries are modality specific, while the late data areas in the processing are awareness level disorders which can arise from stress, and tension involving any part/point of the system. As can easily be seen in Ms. Brown's case, many points/parts have been interrupting to her attention system. Although there are not so many disruptive points/parts currently there still remain problems in this area.

Another characteristic of the attentional system is its limited capacity. Only so much processing activity can take place at one time, so that engagement of the system in processing one attentional task calling upon controlled

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12

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

attention interferes with a second task having similar processing requirements. Because of Ms. Brown's traumatic attention system demands, she often had problems with processing attentional tasks. Although she has been away from her negative, stressful environment for awhile, she still continues to have problems with attentional tasks which of course, in turn, influence her memory tasks. She is in some ways improving, however, under almost any stress; she has problems in this area to this day.

Having provided a brief overview of the field of attention, concentration and memory, it should be stated that Ms. Brown is having, and from all indications will continue to have, moderate to severe problems in this entire area. She finds herself unable to process as much material as she could prior to her experiences in a traumatic work environment over a substantial time frame. She has problems in focusing, and selecting her attention, and problems in sustaining attention. She has problems responding to more than one task at a time, and she has severe problems in alternating her attention from one task to another. In sum, her attention, concentration, and memory functions have been damaged by her hostile working environment.

Another dimension of difficulty in this cognitive area is problems with perseveration. Ms. Brown continues to relive her experiences over and over. She has many flashbacks which continue to scare, stress, and upset her. She has intense psychological distress at exposure to internal or external cues that in any way symbolize or resemble any

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13

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

aspect of her horrific, traumatic working environment.

Ms. Brown has continuing problems with **Emotions and Social Functions**. She remains unable to function as she once did before her unfortunate, long, traumatic experiences at the United States Post Office. Her problems remain in functioning in a social setting, often involving problems with fugue, She gets angry very easily when faced with trying to resolve an issue. She has problems even with entering into regular church functions. So often she is reminded in some way of her lone, long traumatic interactions at her place of work. She still is unable to participate in social and community affairs. She cries and cries, and has headaches, stomach upsets, body pain that still reflects her stressful and menacing work environment. She is often still distraught and her anxiety and depression both are significant. She remembers and still reacts to her experiences of discrimination -gender, age and dark color. She reacts to any person, place or thing to which she perceives she is being retaliated against. She continues to have sleep problems with many nightmares and dreams concerning her work experiences. She also continues experiencing many distressing thoughts. There is also still a pattern of withdrawal responses because she is afraid of interacting with others.

Executive Functioning consists of those functions that enable a person to engage successfully in independent, purposeful functions and self-monitoring behavior, planning and sequencing. They differ from cognitive functions in a number of ways. Questions about executive functions ask **what** or **whether** a person goes about doing something. (Will you do it and if so, how?) Questions about cognitive functions are generally phrased in terms of **what** or

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14

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

how much (how much do you know? What can you do?) So long as the executive functions are intact, a person can sustain substantial cognitive difficulty and still remains independent, constructive, self-serving, and productive. However, if the executive functions do not remain intact, the person will not be able to maintain adequate functioning at home, at school, or at work., except perhaps in a special setting.

For some time after leaving the work force, Ms. Brown had several problems in this area_ She was unable to make plans and could not carry them through_ She continually had problems with sequencing her thought processes, activities, events, and even geography. She couldn't monitor her own behavior effectively, even in a nurturing environment. As time has gone by, she has been slowly recovering in this area; however, if placed in a timed, restrictive, frustrating environment, she still will have problems with coping effectively and efficiently.

3.02. Psychological Testing (Completed February, 2004)

ATTENTION, CONCENTRATION & MEMORY TESTS

Benton Visual Retention Test (BVRT)

This test is widely used for visual recall. It is also a limited measure for immediate span of visual recall. Many patients can do a simple recall; however, those with batial organization problems may have difficulty with handl,,g size and placement relationships.

Types of errors recognized in this test are omission, distortions, perseverations, rotating misplacements, and size. From an analysis of these errors, impaired immediate recall or

JEANNE L. RIVOIRE, Ph.D.
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15

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

attention deficit can be studied. Mostly simplification, substitutions, or omissions are found, indicating attention or concentration problems. Visuospatial and constructional disabilities appear as deficits in the executive or organizational functioning in the brain damaged patients. Spatial orientation can be linked to rotation problems. Consistent distortions can indicate perceptual problems. Perseveration may be linked to visuoperceptual or immediate memory problems.

Head trauma patients tend to make more errors on this test. However, this test does reflect both right and left hemispheric problems. It is quite sensitive to the presence of brain damage. Research reports show that it is better in distinguishing patients with cerebral brain damage than those with psychological injury.

Results on The Benton Visual Retention Test (BVRT)

Ms. Brown had difficulties drawing these designs and even more difficulty remembering. She often could not draw the figures because her thoughts would wander. As the tasks became more difficult, she had more and more difficulty. Overall, her problems with attention and concentration as well as memory were seen for she could not stay focused. Often in the memory pacts, she was not able to recall the figures even when she was given additional clues.

JEANNE L. RIVOIRE, Ph.D.

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1970 Broadway, Suite 610

Oakland Ca 94612

16

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

BENDER - GESTALT

This test is a set of nine designs originally used to demonstrate the tendency of the peripheral system to organize visual stimuli into organizational wholes. The designs were assembled and numbered 1 - 8 by Laurette Bender. Each card is presented one at a time with instructions to copy them exactly. The cards are removed, the client is asked to draw as many of the figures as can be recalled. These are drawn on a white sheet of paper handed to the client. In some administrations each card is shown for five seconds and then removed. The client is then instructed to draw it from memory.

Normal clients typically recall five designs or more. Low recall is regarded as being suggestive of brain injury. It has been found that psychologically injured patients recall six designs, on the average, whereas on the average, organic clients recall three to three-and-a-half designs.

Of interest as to what type of information can be gleaned from this instrument, there are many attributes. Perseveration, rotation, added pieces, subtracting of parts, separation of lines, overlap, distortion, embellishment, omission, abbreviated designs, separation, point of control, all can lead to useful information concerning the functioning in examining a client.

Eleven characteristic distortions have been found to be associated with organic conditions. These eleven are

JEANNE L. RIVOIRE, Ph.D.
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SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

particularly associated with brain damage. The eleven are collision, angulation difficulties, rotational difficulties, simplification, fragmentation, overlapping, perseveration, elaboration, redrawing of a total figure, line incoordination, and concreteness.

Like other visual spatial (visuographic) difficulties, these Bender difficulties of the organically injured brain tend to give credence to a parietal injury. The right parietal area may be associated with the poorest performance. Those individuals with damage to both hemispheres are likely to make many errors of omission. Bender, however, found that an adequate copy does not rule out brain damage. Further, a noilual appearing Bender . does reduce the likelihood of parietal involvement. The sensitivity of this test to diffuse cortical involvement or subcortical damage suggests that copying tasks require a high level of integrative behavior that is not necessarily specific to visuographic functions, but tends to break down with many kinds of cerebral damage.

Johnnie Brown's Results on the Bender Gestalt Test

Ms. Brown had problems in copying these figures. She took five minutes and six seconds to complete the drawings presented to her one at a time to copy. She made errors such as directional changes (6), she reinforced her lines over and over. She had to look back and forth a number of times for each figure. Several figures ran into each other. She also added elements on two figures. She often repeated the same

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1970 Broadway, Suite 610
Oakland Ca 94612

18

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

added element over and over, indicating perseveration. When asked about these repetitions, she said she did not remember repeating herself. This, of course, is a very good indication of an attentional system *failure*.

The results of the memory phase of this test indicate she had only fragments of figures, and that she did not reproduce any figure in totality. Again, memory, concentration, and attention as well as perceptual problems are also seen.

VISUAL SEARCH & ATTENTION TEST (VSAT)

This is a cancellation test which consists of four sixty second trials. It has a straight forward letter cancellation foil on the first one. The second consists of typewriter symbols (e.g., [< > %). The third and fourth are composed of letters and typewriter symbols especially colored, with color serving as an additional distractor as the characters are randomly printed in red, green, or blue. Each line is 40 characters long with ten targets to a line together with ten lines to a trial. Performance is evaluated for left and right sides for each trial. This test is involved with attention and concentration processes, both voluntary and involuntary attention processes, and speed of processing, both of which are usually impaired in individuals who have suffered brain damage. Impairment in these abilities is often a prominent effect of brain damage. It has been well established that sustained attention is a critical ability in information

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19

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

processing and a deficit is often found in those suffering brain damage.

Results cm the Visual Search & Attention Test

Ms. Brown was able to cancel out fifty-two on the first trial within the sixty seconds allowed. She tried to relax but found herself getting more and more upset. Her attention and concentration were seen to be in difficulty. She tried to do the typewriter symbols first, but gave up. She did not succeed in this endeavor at all. At this point the test was discontinued. The results of this test would seem to reflect serious problems in attention, concentration and memory when she is under pressure.

SOCIAL - EMOTIONAL It:STING:

Beck De ressive Inventory: Ms. Brown states she is sad almost all the time and he can not snap out of it. She feels discouraged about the future. She feels that she has failed more than the average person. She does not get real satisfaction out of anything anymore. She feels guilty most of the time. She is disappointed in herself. She is critical of herself for her weaknesses and mistakes. She feels irritated all the time now. She has lost most of her interest in other people. She has great difficulty in making decisions. She worried that she is looking old and unattractive. She states she can not do any work. She has problems with sleeping, often waking up earlier than needed and can not get back to sleep, or

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Oakland Ca 94612

20

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

else she sleeps so soundly she is not able to awaken with ease. She is too tired to do anything She is very worried about her problems to the point that she finds it difficult to think of much else. She is much less interested in sex now. Ms. Brown. scored a total of twenty-nine points on this inventory. Since twenty-six is the cut-off point for moderate to severe depression, it can be seen that Ms. Brown is indeed at the moderate to severe level of depression.

IPAT Anxiety Scale: She scored very high on the apprehension component. She is unable to sleep through worrying, remains task oriented, does not feel accepted. She is often self-reproaching and troubled. She scored at the highest level on the tension component. This result reflects that she is indeed seriously frustrated, driven, and overwrought. This scale's result is highly correlated with clinically diagnosed depression. Manifestations of this severe frustration are seen in responses of anger, and anxiety, as well as depression.

Wechsler Memory Scale: Ms. Brown was able to perform the basic concepts such as reciting the alphabet, and counting backwards. She could perform the Serials Three Forward but made some mistakes in Serials Seven Backwards. She recalled facts from stories with some success. On Digits Forward she was able to score well above the average range, but Digits Backwards gave her trouble after the first four. Associate Learning was seen as very difficult for her.

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

21

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

EXECUTIVE FUNCTIONING TESTS:

Executive functioning comprises a system in the precortex area of the brain that translates awareness into action. This system consists of those capacities that enable a person to engage successfully in independent living, purposeful, self-monitoring behavior as well as prosocial activities. They differ from cognitive functions in that executive functions ask how or whether a person goes about doing something. "Will you do it, and if so, how?" Cognitive functions on the whole are (generally phrased in terms of "what or how much?" "How much do you know?" "What can you do?" If the executive functions are intact, a person can sustain considerable cognitive loss and still continue to be independent, constructively self-serving and productive. When executive functions are impaired, a person may no longer be capable of self-care or performing work duties independently. Normal relationships cannot be maintained no matter how well the cognitive skills are preserved. Executive functions tend to show up globally affecting all aspects of behavior including cognitive functioning. Cognitive deficits generally tend to involve functions or functional areas (Executive vs. Awareness). Included in the executive functions are short-term oriented programming functions which are designed to accomplish tasks successfully, such as goal selection, anticipation, planning, implementation, monitoring, and use of feed back. Executive dysfunctions include deficits in drive such as inertia, apathy, and labile behavior. There may be sequencing deficits such as perseveration, disorganization, and impairment in problem solving ability.

JEANNE L. RIVOIRE, Ph.D.

California Licensed Psychologist

1970 Broadway, Suite 610

Oakland Ca 94612

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

TRAIL MAKING TEST (TMT)

This test has been widely used in clinical settings for over fifty years. It has been noted to be useful in the evaluation of the brain injured. This test is currently employed as part of the Halstead-Reitan battery and more recently used as a part of a new flexible battery for evaluation of brain injured persons. Because of its ease of administration and its sensitivity to brain damage, it is now used in evaluation of the brain damaged most frequently.

The test consists of two trials. Part A consists of the numbers 1 – 25 appearing separately within circles distributed in a random fashion on an 8 1/2" by 11" sheet of white paper. Part B consists of the numbers 1 – 13 and the letters A through L, also displayed in random fashion on an 8W" by 11" sheet of white paper. The scores on this test reflect the total time (in seconds) needed to connect the numbers in sequence (Part A) or the numbers and letters of the alphabet in alternating sequence (1-A, 2-B, 3- etc.,) on Part B.

Part A is primarily a test of visual attention involving perceptual tracking, and simple sequencing. Part B, because of the alternating sequences, more directly assesses the prefrontal cortex and perhaps other cortex regions. Part B is thought to be more sensitive to dysfunction. A & B measure sustained visual attention, visual scanning, and graphomotor skills. Both A & B provide information on eye-hand coordination and information processing.

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1970 Broadway, Suite 610
Oakland Ca 94612

23

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

COLOR TRAILS TEST SCTT) This test arose out of the desire for an analog of the preceding test that was as free from the influence of language as possible. The CTT retains the psychomotor properties of the TMT, but it substitutes the use of color for the use of English alphabet letters. The CTT is based on the number of colored circles. It consists of circles approximately 1/2" in diameter with numbers printed inside. Each circle has either a vivid pink or yellow background. Color Trails is similar to TMT A with the exception that all odd-numbered circles have a pink background and all even numbers have a yellow background. For CTT-2 each number is presented twice, once on a pink background and once on a yellow background_ Color Trails 1 and 2 are both presented on an 8 1/2" x 11" sheet of white paper.

Ms. Brown's Results on the Trails Making Tests

On Trails A she completed the test in 42 seconds. A cutoff score of >40 seconds has been used by some experts. Her results would tend to indicate at least moderate impairment. On the Trails B, she completed it, but took over two minutes to complete. A cutoff score here of >90 is used by many experts. She also made five errors. The results on this test would certainly indicate that she is having problems with executive functioning.

On the Color Trails, she took 66 seconds to complete Trail 1. There was only one error. This would indicate a level of at least moderate impairment in executive functioning. She

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California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

24

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

had problems with staying focused and keeping her pencil on the paper. On Trail 2, she could not complete this trail at all. She became highly frustrated and the test was discontinued.

STROOP COLOR AND WORD LEST
(GOLDEN VERSION)

This test measures the ease with which a person can shift perceptual set to conform to changing demands and suppress an habitual response in favor of an unusual one. Basically this is a measure of selective attention and cognitive flexibility. The Subject reads randomized color names, all printed in black type. The Subject then reads colored X's printed in colored ink. Finally the Subject reads the color name, ignoring the printed word. It reflects the ability to sustain mental processes and select appropriate features. There is also an element revealing how a Subject divides his attention. It also involves some planning and organization. There would appear to be some correlation with the Tower of Hanoi results.

The Stroop Test has been studied in psychiatric and brain damaged patients. The test is fairly effective in distinguishing brain damaged patients. Head injured patients are typically slower in responding. Flexibility and attention both are necessary attributes to success on this task. Frontal lobe and prefrontal damage are seen, particularly in the third task on this test.

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

25

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

Ms. Brown's Results on the Stroop Color and Word Test

Ms. Brown was not able to succeed on any part of this test. She tried, but she had serious problems with making decisions, problems with sequencing planning and problems with monitoring her own behavior. She also had serious problems with being flexible and had serious problems in going from situation to the next. Other problems involved sustaining mental processing, selecting appropriate features of a problem and problems directing her attention.

FIVE POINT TEST

Examining response fluency was introduced with this test. There are contiguous squares in a 5" x 8" array. Each square contains five symmetrically and identically arranged dots. The examinee is asked to make as many different figures as possible within five minutes by connecting the dots with straight lines without repeating any figure. Productivity and the ability to vary one's responses are essential to success on this test. Other executive functioning also contributes to good performances, such as self-monitoring, remembering, and following rules, use of strategies, and creative imagination.

Ms. Brown's Results on the Five Point Test

Ms. Brown got the first five boxes correct. She then seemed to not be able to make plans or carry out any planned decision. She would connect a few dots, but not according to

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1970 Broadway, Suite 610
Oakland Ca 94612

26

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

instructions. She would connect these dots and then move on to the next box. Her productivity was very low and she soon just gave up and said she was just too tired to continue. These results give further indication of executive functioning difficulties including planning, shifting focus, decisions making, initiation of activity, and self-monitor her own behavior.

4.00. Diagnosis: Essentially, her diagnoses remain the same as in the report dated May 12, 2000 to Jan Woods in the Workers' Compensation Division of the Department of Labor in Washington, D.C.. (**See Copy of this report at Appendix A**) There have been some improvements, especially when Ms. Brown is in a relaxed environment. However, when there is tension or frustration, she still has serious problems. The diagnoses are made according to DSMIV guidelines.

AXIS I: **General Anxiety Disorder** (DSMIV: 300.02) with Panic Attacks. Basically over a long time period - Marked to Severe level. Many features of Post Traumatic Stress Disorder.
Major Depressive Disorder (DSMIV: 296.33). Suffered over a very lengthy period of time - Severe level.
Associated features: Intellectual Resuiction, Social Interaction Problems, Some Social Withdrawal, Pain and Suffering.

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

27

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

AXIS II: NONE.

AXIS III: Headaches — frequent and severe, dizziness, fatigue, nausea, vomiting, diarrhea, loss of energy, appetite disturbance, restlessness, trembling, sweating, difficulty swallowing, sleep disturbance, numbness, decreased motor activity, at least one episode of loss of consciousness, suspect many more episodes of near loss of consciousness.

AXIS IV: Severity Of Psychosocial Stressors: Severe (5). Severe employment problems over a very lengthy period of time resulting, in severe effects upon Ms. Brown which have caused a severe disturbance of her peacefulness.

AXIS V: Global Assessment Of Functioning (GAF): 40. She has been lower in the past year and only with being away from her hostile working environment has there been any relief. This level, however, is very fragile. There have been serious occupational problems over a long period of time. There are cognitive problems as well as mood problems. There remains some slowing of thought processes, and some withdrawal. There are serious problems with self-image, self-worth, and self-identity. The Social and Occupational Functioning Assessment Scale (SOFAS) still remains rather low (45) for she still has serious problems in these areas.

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1970 Broadway, Suite 610
Oakland Ca 94612

28

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

5.00. Brief Overview of Ms. Brown's Present Activity Functioning:

Sleeping: Ms. Brown has had, and continues to have, problems with sleeping. She continues to have nightmares and dreams about her traumatic, stressful experiences at her job at the Post Office. Her nightmares are so terrifying to her and often she does not sleep for fear of dreaming of her managers and supervisors. When she does awaken, she still has problems in getting back to sleep. She often is up most of the night and has problems staying awake in the day time. Even when she does get to sleep in the day time, her dreams are often involved with her traumatic, horrific experiences at the Post Office. Often her dreams and nightmares are very scary and she becomes terrified, with sweat breaking out all over her body.

Eating: Ms. Brown likes to eat however, her stomach is often in such turmoil because of her experiences and stress that she cannot eat much. On other occasions, she will eat too much and then suffer diarrhea. If she is eating and the subject of the Post Office comes up, she has to stop eating or she will become nauseous. Upon occasion she cannot eat at all because her stomach is so cramped up from her reactions to her work experiences which were so painful.

Personal Hygiene: Ms. Brown often has spent the entire day in bed. She would neglect herself and just not get out of bed except to tend to her elimination functions. Often her head hurt so bad she just could not get out of bed. When she did she would put on just about anything because she was so distraught. Beginning around the middle of 2003,

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SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

she began to start taking better care of herself. However, still when she gets frustrated or stressed at being reminded of her job, she will revert to lower personal hygiene. Examples are not changing clothes, not bathing, and not wearing makeup.

Bathing and Showering: Ms. Brown. has only recently begun to feel like performing these activities on a daily basis. For a long time after August, 1999, she was so distraught that' she only bathed or showered when she had the energy to do so, which was not very often. Gradually, these activities have returned to a rather systematic functioning level. However, even yet when she feels frustrated and stressed, she will begin to feel "too tired" to engage in these activities.

Dressing: For a long time, Ms. Brown was just too fatigued with no energy and just threw on any set of clothing. Upon occasion the colors did not match, shapes did not go together. Often she would put on dirty clothes thinking they were clean ones. Her daughter often had to tell her that her clothes did not match, that she had left off a piece of clothing and/or her clothes were not clean. Gradually, she has been able to improve in this area. She rarely wears dirty clothes, but still upon occasion will mix up colors or put together clothes that do not match. This is particularly true when she becomes frustrated with distressing thoughts of her traumatic experiences at the U.S. Post Office.

JEANNE L. RIVOIRE, Ph.D.
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30

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

Cooking and Food Preparation: Ms. Brown does as little as she possibly can. She used to cook large meals for her entire family. Now she prepares only very simple meals for herself. She states she has no energy, is too worn out, too fatigued to do anything else. Ms. Brown used to cook for all of the family at all the major holidays. Now she no longer does so. She states that since her traumatic experiences at the U.S. Post Office, she simply has not been able to do so. Now, other family members prepare the food for family get togethers. Her clauter now often brings her meals to her.

Driving and Going Places: Ms. Brown used to drive wherever she wanted to go. Now, she states, she still feels uncomfortable driving. She still will try to drive short distances to places which are familiar, but otherwise she gets her daughter to drive her. She also fears having an accident for her mind wanders and keeps perseverating about her very distressful experiences at the job. Another fear of driving for her is that she might have another episode of syncope and have a fatal accident. She also has fears of setting lost.

Social Functioning: Ms. Brown rarely goes anywhere without someone in her family going with her. She is afraid she will embarrass herself in one way or another, but particularly by yelling. She states she has done this so many times – she describes still not remembering yelling and it is as if she just became semi-conscious – almost like a fugue. She states she also gets these reactions through the present time, however, they do seem to be getting less frequent.

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SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

6.00. Causal Agent:

As stated in the report of May, 2000 and after a careful review of her functioning since that time, the same conclusion as reported at that time can still be made. Her harm has been and continues to be the result of the long exposure to a harassing, offensive working environment at the United States Post Office. The very long exposure (1991-1999) was both daily stressful and cumulatively stressful and left her significantly harmed even through the present time. Please reference section seven in that report. Also, please reread section 2.00 of this present report. In sum, Ms. Brown has been significantly harmed and traumatized to the point of severe chronic stress leading to syncope and episodes of fugue.

7.00. Prognosis:

Ms. Brown's prognosis is guarded, certainly for regaining her premorbid condition and even possibly for life itself. She has already had one episode of syncope because of extreme chronic stress. This would seem to probably leave her more susceptible to future episodes. It could also be a precursor to even seizures. Her traumatic experiences have also left her highly fatigued with little to no energy. She also has little to no reserve energy. Her social interactions have been, and continue to be, moderately to severely damaged. Her problems with socio-emotional functioning are probably the area which will continue to be unresolved for the foreseeable future. All in all, her prognosis remains guarded (poor).

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32

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

It is hoped that the above information will be helpful to you in understanding that Ms. Brown has been, and remains, severely harmed. It should also be understood that she served the U.S. Postal Service diligently and loyally for many years without question of her contribution. For your information, Ms. Brown continues to be seen in this office on a twice a month basis. It is estimated that at least another year of therapy will be needed before she can function effectively on her own

Sincerely,

S/
Jeanne L. Riviore, PhD.
California Licensed Psychologist

CF: Johnnie Brown

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33

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2004

APPENDIX A

COPY OF REPORT TO JAN R. WOODS
U. S. DEPARTMENT OF LABOR
OFFICE OF WO' 1 TENS' COMP PROG - MS
DIVISION OF FEDE L EMPLOYEES COMP.
WASHINGTON, D.C. 20210

CONCERNING: MS. JOILNNIE L. BROWN

DATED: MAY 12 2000

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May 12, 2000

Ms. Jan R. Woods,
U.S. Dept. of Labor
Office of Workmens' Comp. Programs
Division of federal Employees Comp.
Washington, D.C. 20210

RE: **Johnnie L. Brown**
DOB: 01-05-38
SSN: 429-70-0958
File Nr: 94619-131196672
DOI: Cumulative with
final date of 8-26-97

Dear Ms. Woods:

1.00. Identification of Applicant:

Ms. Johnnie Brown is a sixty-two year old African-American woman and a resident of Alameda County, City of Oakland, State of California 94619. From August 28, 1965 until the present time, she has been an employee for the United States Post Office. For the first five years, she worked as a Distribution Clerk in different units. During the year 1970, she was promoted to Sacksorting Machine Operator. She worked that job for eight years. Intefinitently she was detailed through these years as Sack Sorting Machine Console Operator. During the year of 1978, she bid for a job in the Personnel Services Office in the Office Tower. Here she worked in different jobs until 1986. She was a Personnel Clerk and General Clerk in the Safety Office, While working in the Safety Office, she was also intermittently

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2

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

detailed as a Safety Specialist, which was considered a management position. (In 1979 she received an AA degree in Industrial Management from Merritt College.) During 1986, she was detailed to Acting Supervisor, Mails, where she remains to the present time. Soon she was promoted to Supervisor. She did receive one more promotion when she was designated as Supervisor, Distribution Operations. She does state that throughout this entire period she was never given any disciplinary action for any reason. She claims to have suffered cumulative psychological injuries as a result of events and exposure during the time from 1991 through August 26, 1997.

2.00. Brief History of Onset of Illness:

Ms. Brown was originally hired August 28, 1965. She worked in various positions successfully and apparently without major incident until around 1991. At that time, she alleges the harassment, disrespect, non-support, and discrimination became very obvious and she was apprehensive, stressed and angry. She states she began crying a lot because of how she was treated. It appears that the overall picture since 1991 has been an unpleasant, hostile one. It would seem at this point, her supervisors began following her throughout a good part of Ms. Brown's workday with excessive scrutiny, harassment and criticism. This behavior was immediately in front of Ms. Brown's employees or else in small groups (two/three people) behind closed doors. In either case, there were even threats of disciplinary action. It

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SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

is of interest that even these threats which are a matter of public record, that Ms. Brown has never received any disciplinary action for any cause.

In J991, Ms. Brown began experiencing an agonizing work environment. In April 1991, a Carlos Cruz (her supervisor) called a meeting of her employees to determine how they felt about her, in front of her. She was upset and stressed. She was angry, apprehensive, nauseous, and she cried a lot. She states others at her level were not treated in this manner. Also, in April 1991, she requested a review of her merit. Mr. Cruz gave her no response. She felt left out and again, could not control her tears. In September 1991, there was a meeting about one of Ms. Brown's employees. During the meeting, Flossie Morris, another Supervisor of Ms. Brown, apparently yelled at her. Ms. Brown was very upset and felt nauseous. Again, there was stress. In December 1991, there was another meeting with her employees with Mr. Cruz and Ms. Morris yelling at her in front of her employees. Ms. Brown states she had ringing in her ears and severe headaches. She could not eat nor could she sleep. She was demoralized, vomiting and crying. Her pain and suffering increased.

In January 1992, again Mr. Cruz had a meeting of several of Ms. Brown's employees. These employees were asked to evaluate her while she was present. It seemed to Ms. Brown that Mr. Cruz was trying to upset the relations between Ms. Brown and the employees, which she supervised. She felt hurt, humiliated, nauseous, and worse, she found it hard to face those she supervised (e.g., she went to the

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4

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

lunchroom after lunch hour so her employees would not see how she was affected.)

In April 1992, she asked for a telephone to be placed on her desk to communicate with others in order to carry out her duties. Ms. Morris denied the request, although all of the other supervisors on her floor had one on their desks. Ms. Morris stated that she did not need one as she could share with the unit nearest her. Again, Ms. Brown felt hurt, felt like she was being singled out, and she felt ill and her pain and suffering continued. By now, she also felt that Mr. Cruz was singling her out and discriminating against her.

In May 1992, Ms. Brown reports that Mr. Cruz was reassigning her employees so that she couldn't tell the correct number she was supposed to have. Consequently, she often worked short. She felt hurt, somewhat confused, and apprehensive. She had headaches, neck aches, and often felt dizzy. Also, in May 1992, Ms. Brown had a grievance filed against her by one of her employees for not treating the employee with respect and dignity. Millie Watson, one of Ms. Brown's Supervisors, told her that she must treat the employee with respect and dignity, and yet never bothered to listen to Ms. Brown's side of what had happened. The irony about this for Ms. Brown is that she did not feel that Ms. Watson ever treated her with respect and dignity. Again, Ms. Brown felt hurt and humiliated. She believed that she had lost the positive atmosphere in the workplace.

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5

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

In January 1993, her employees continued to be moved to other units, yet Ms. Brown was expected to meet the same goals. Ms. Cruz continued to move her employees. She was distressed, angry, frustrated, hurt and apprehensive. In February 1993, it was stated to Ms. Brown that forty-five employees filed complaints against her. Apparently, Mr. Cruz, Ms. Morris and Ms. Watson had instigated these complaints. Over fifty percent of this number did not even work for Ms. Brown. As to the rest of this group, apparently the person who collected the complaints did not advise the employees of what they were signing. Ms. Brown felt this was outrageous and that these supervisors intentionally obtained these complaints to harass her. The situation continued to intensify and helped create a very hostile and stressful working environment. She was hurt and felt humiliated, harassed, and began to wonder if indeed there was gender harassment against her as an older, woman Supervisor. Her headaches increased.

Later in this same month (February 1993), Millie Watson called a meeting of Ms. Brown's employees where the employees were encouraged to degrade Ms. Brown in front of all those attending the meeting. Ms. Brown was very hurt, felt light headed (almost lost consciousness), and felt she had lost control of her unit. She continued to feel that she was being harassed because of her gender and race, particularly because of her dark color.

In May 1993, Ms. Brown issued a Warning to an employee to improve his work. A meeting took place with the employee, Millie Watson, and Ms. Brown in attendance. Ms. Watson, in front of the

JEANNE L. RIVOIRE, Ph.D.
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Oakland Ca 94612

6

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

employee, told Ms. Brown that the employee should not be expected to work hard, that the employees should work on their own and Ms. Brown should not supervise them, and if the job did not get done, so be it. Ms. Brown states she felt empty and lost. She felt there was no purpose in reporting to work; that as a female — woman — she could not supervise — her self-image was in serious jeopardy — she began to feel that because of her dark color, she was not capable. She also felt ill, angry, helpless and even somewhat hopeless.

Throughout the rest of 1993, meetings were frequently held and employees were asked to evaluate her, right in front of her. Overall, most of these meetings were held by Millie Watson. Ms. Brown continued to feel distressed, helpless, and humiliated. She developed neck pains and she continued to have daily headaches. She felt empty, hopeless, and depressed. She often was nauseated and on many occasions, she suffered severe diarrhea and felt like simply could no longer concentrate and focus, as she once was able to do.

Beginning in 1994, the number of meetings increased and were called to evaluate her performance. Mr. Cruz, Ms. Morris and Ms. Watson continued to interrogate her, to threaten her, and to harass her. She now began to feel numb at times, and at other times, she felt pain throughout her body. She felt harassed. She felt humiliated. She was nauseous almost all the time now, she was apprehensive, and she was so full of anxiety now that her mind often just went blank.

JEANNE L. RIVOIRE, Ph.D.
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7

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

In March 1994, Ms. Brown issued a letter of warning to an employee. She stated she followed her Supervisor's guidelines and rules. Yet, Ms. Watson told Ms. Brown to leave the employees alone: "Allow them to work on their own." She accused Ms. Brown of working them too hard. Ms. Watson stated to Ms. Brown that the employees should be given a break. Ms. Brown felt humiliated, harassed, and harangued.

Also in March 1994, Ms. Brown filed an EEO complaint concerning Millie Watson, because there was delay in Ms. Brown's unit because she followed Ms. Watson's instructions not to supervise employees and to leave them alone. Millie Watson continued to tell her to leave the employees alone. Louis Buckingham, another Supervisor, started following Ms. Brown around in her unit. This became a very difficult situation for Ms. Brown. It left her feeling empty and with her whole body in pain. She was severely apprehensive, had headaches, and had significant stress. She felt discriminated against (e.g., Mr. Buckingham, a male, was not treated as was Ms. Brown; further, Mr. Buckingham got all the help he needed.) She also began feeling that she was being discriminated against because of her age and her dark color. Her nausea and diarrhea continued.

From July through December 1994, Ms. Watson continued to call meetings about Ms. Brown. During this period, Ms. Watson continued to berate Ms. Brown in front of her employees. Ms. Brown felt empty, humiliated, and harassed. She also felt there was gender

JEANNE L. RIVOIRE, Ph.D.
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Oakland Ca 94612

8

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

harassment, had headaches and neck aches. She could not eat, and she had nightmares. (One such nightmare was of Millie Watson running after her and throwing Mr. Buckingham at her.) She often had problems getting to sleep and staying asleep. She stated her concentration was significantly reduced and she had problems now in pacing herself, thinking clearly and staying focused.

In February 1995, Millie Watson again required Ms. Brown to input her own data into the computer, which was in another part of the office. This caused Ms. Brown to have to run back and forth from the computer to her unit. No other Supervisor was required to enter his or her own data but could use a clerk to do so. (e.g., Louis Buckingham was a Supervisor who used a clerk for this work duty.) Ms. Brown again felt discriminated against, felt increased stress, and her anger was almost unmanageable. She also felt age discrimination was entering into the picture for the other Supervisors were much younger.

From March 1995, through December 1995, Ms. Watson continued to hold meetings with Ms. Brown's employees, asking them how Ms. Brown treated them. Ms. Watson also walked the floor and followed Ms. Brown around. Ms. Watson continued to tell Ms. Brown to let the employees work as they desired. Under these conditions, the mail flow decreased. Ms. Brown felt highly distressed, angry, apprehensive, depressed, and again felt gender discrimination and age discrimination as well as discriminated because of her dark color. She had problems with her self-image and her concentration was lowered with focusing difficult.

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
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Oakland Ca 94612

9

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

In May 1996, Ms. Brown was assigned to another location by Carol Miller, Senior Plant Manager. This assignment was to the first floor and Ms. Brown viewed this as a punishment assignment. She felt humiliated and harassed and was extremely distressed. She was forced to work a large volume of mail with a small number of employees. To make matters even harder for her, the Supervisor set up the format of various types of mail having to be worked. She felt very apprehensive and severely stressed. She also wondered if gender discrimination was really becoming a serious factor. By July 1996, she was asking/pleading for more employees, however, no help was forthcoming. Instead, the employees were assigned to male and younger Supervisors. She continued to be distressed with feelings that she was being discriminated against because she was an older woman.

By August 1996, she was asking to speak to her Supervisor, however, she was never allowed to do so. She asked to speak to Carol Miller who had placed her in this unit. She was not even acknowledged. She felt that she "had been set aside" like she was invisible and upper management treated her as if she did not exist. She felt ill and totally set aside. She was apprehensive and depressed. Her self-image was lowered, her concentration constricted, and she was having trouble focusing.

In September 1996, Mr. Ridgeway Smith, apparently one of her Supervisors, ordered her to change color codes for the mail in her unit. He threatened her with a five-day suspension if she

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

10

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

did not follow his instructions. Ms. Brown did not follow these instructions, for if she had done so, she could have been removed from the Postal Service for violating Postal Rules and Regulations. Beside, Mr. Cruz and Ms. Griffin were very aware of the Postal Rates and Regulations that had to be followed and they would have been ready to fault her immediately. Ms. Brown felt like all of this was being done on purpose and she was being setup to be fired, i.e., by sending her to the first floor and then illegally asking that she change the color codes. She felt she was being discriminated against because of her gender, her age, and even her dark color. She had problems with her receptive functions of selecting, acquiring, and classifying and integrating information. Her alertness was somewhat restricted. She was beginning to fatigue easily. Her attention and concentration were restricted. Her capability for going about doing things (Will you do it, and if so, how?) was indeed slowing being eroded.

Also in September 1996, Clytee Johnson advised her that she could not sit at her desk when she was working in another unit (180). This disconcerted her so severely she was off work for two days. When she returned, her desk had disappeared altogether. A casual employee finally found it outside on a platform. Her personal effects were still locked in the desk together with some official documents. Ms. Brown cried about this incident. Clytee Johnson would not allow Ms. Brown to rehire the casual worker even though Ms. Brown had rated her Outstanding on her evaluation. Ms. Brown felt that he was punishing her, further, that he was punishing the Casual Employee

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

11

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

and causing her emotional pain because she had assisted Ms. Brown. Again, Ms. Brown felt hurt, humiliated, and discriminated against. She was angry, and she cried. By now, she felt that her Supervisors and management had no respect for her.

From October 1996 through December 1997, her supervisors and management continued to implement frequent incidents similar to those already described. Sharon Bell, a Manager, continued to favor the male Supervisors and discriminate against Ms. Brown, a woman. Ms. Bell apparently never assigned enough employees for Ms. Brown's large volume of mail. Ms. Brown felt severe pressure, knowing she had to work all of the mail, which contained the current color code or else, she face serious disciplinary action. Ms. Brown states that throughout this entire time period, that Mr. Griffin knew what was going on and allowed it to continue. She continued to be stressed and apprehensive. .

In 1998, Ms. Brown documented numerous incidents of similar types of behavior to that listed above. She was becoming more and more frustrated and her stress level was indeed rising. Sharon Bell and Nathan Griffin were particularly adamant about her work. They called her in the office early in this year and told her that her work performance was not acceptable, even though Ms. Brown had far exceeded the goals. Ms. Brown's loyal employees tried to help her meet the unreasonable goals, but given the volume of mail and working short, handed made this very difficult. An example of this occurred in May, 1998 when her unit processed 3,109,106 pieces of mail using just 14 employees.

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

12

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

In July 1998, on one occasion, 97 employees were assigned to Joe Perkins' unit, but only 15 were assigned to her unit. This appears to be broken down to two Jitney Operators, and an employee to pickup mail in the outside drop boxes. This left 12 employees to process the mail, yet 1,683,302 pieces were processed. Again, in July 1998, Joe Perkins' unit was assigned 42 employees, while Ms. Brown had 17, yet they processed 2,105,254 pieces. Ms. Brown was becoming very distressed.

In August 1998, a similar pattern continued, with 80 employees assigned to Joe Perkins' unit. Ms. Brown's unit had 21 employees assigned and yet they processed 3,037,572 pieces of mail. At this point, Ms. Brown began having pain areas at both temples, daily headaches, almost daily nausea, and her anxiety was mounting.

This process of working short handed continued on and on and on. In October 1998, she had 9 employees to process the mail in her unit. In addition, 5 of Ms. Brown's employees worked for another unit for an hour and twenty minutes each day. This took around 6-7 man-hours away from Ms. Brown's unit. She felt physically ill, her temples began to throb, and there were stomach upsets. She was angry, upset, and apprehensive.

In November 1998, she changed jobs with Louis Buckingham. Her immediately was assigned 28 employees by Sharon Bell, although the schedule stated 18. Ms. Brown was assigned only 2 employees

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

13

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

before she was moved. She continued to work short. Mr. Brown provides more and more examples of having to work short, but through it all she was expected to meet the required goals for her unit, regardless of the personal cost.

In 1999, Ms. Brown continued to work in the SPBS #1 (this was the Small Parcel Bundles Sorter) unit. This unit required operating different equipment than in her previous unit, but basically, it required managing more pieces of mail in automated equipment. Containers were filled by the equipment, which had to be dispatched to the appropriate places.

In January 1999, she worked with at least two clerks short. She states that at least two more clerks would have been needed to have this operation flow smoothly. Her clerks worked harder and harder to help her meet the required goals and demands of Supervisors and Managers. Ms. Brown continued to feel discriminated against and she was distressed, felt ill and cried.

In the middle of January 1999, she had seven clerks available to run five consoles. She needed two more. Ms. Brown, herself, was forced to sweep and to dump mail onto the belts. Nonetheless, her unit processed 27,753 pieces of mail using 5.3 hours of run time.

In February 1999, Sharon Bell told Ms. Brown that her hourly output was far too low. Ms. Brown was also told by Sharon Bell that

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

14

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

Ms. Brown needed to monitor her operators. Ms. Bell further advised Ms. Brown that she wanted Ms. Brown to advise her (Ms. Bell) how she was going to increase her output. It was interesting that Sharon Bell stated these demands to Ms. Brown because Ms. Brown did meet her goals on a daily basis. The goal at this time was 1,000 pieces per hour per console. An example of this: Ms. Brown's unit processed 12,747 pieces of mail in 4.2 hours for the three consoles. This equals out to 1035 pieces per console on February 1, 1999. On February 10, 1999 the pieces of mail to be processed per hour was raised from 1000 to 1200. This was very difficult for Ms. Brown because she was continually forced to work short. It required Ms. Brown to continue to help the other employees sweep and load the conveyor belts to be able to meet the goals demanded. On this day, 28,231 pieces of mail were processed in 5.3 hours which equals 1412 pieces per console per hour. It should be noted that although the quotas/goals were made, it was because of the extreme effort of the unit to do so. It left Ms. Brown exhausted, further stressed, angry, and disillusioned. She felt very discriminated against.

The process of working short was a continuing process for Ms. Brown's unit through March and April 1999. In May 1999, it seemed like further harassment was implemented. Ms. Brown's unit continued to work short, but now Ms. Brown's Jitney Driver was being harassed by Clytee Johnson. This forced the unit to work the mail out of color sequence. Ms. Brown was almost beside herself; she was dangerously distressed. She felt like her supervisors and managers were deliberately

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

15

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

trying to cause her to fail so that she could be dismissed from the Postal Service.

In June 1999, further difficulties were added to working short and having to work the mail out of color sequence. New work left by the previous shift was being left for Ms. Brown's unit to do. Early in June 1999, her unit kept having to dispatch mail left from the previous shift. This got to amount to as much as 70 containers on more than one occasion. Of course, this meant down time for the work meant to be accomplished by Ms. Brown's unit. Her employees skipped breaks and worked full tours to help meet the requirements. Similar incidents kept occurring and occurring. It is particularly of interest that more and more work kept being left by the previous shift for Ms. Brown's unit to complete.

Similar incidents continued through all of June and July 1999. Ms. Brown continued to work short, had supervisors and managers following her around, having inordinate amounts of down time which were the result of having dispatches left over from the previous shift or because of the unannounced movement of consoles and the looking for replacement equipment took so much time, or having to give equipment to other supervisors. Yet, through all of this, she was still supposed to meet her quotas. She felt great stress, felt ill, angry, and completely disillusioned. She felt that the younger and male supervisors were always favored by Edna Gray as well as others in management.

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

16

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

By the middle of August, there would seem to be further deterioration of the working environment. Mr. Griffin favored other supervisors such as Louis Buckingham and Francis Webb. Another example of this was Mr. Griffin allowing these two to change their schedules. However, he did not allow Ms. Brown the same privilege. She felt that again, she was being discriminated against because she was a woman and was older. Her stress had reached such proportions that Ms. Brown really no longer was aware of it.

On August 15, 1999, Mr. Griffin was told by Ms. Brown that Carol Miller, Senior Plan Manager, had instructed Ms. Brown to split the sacks of mail with another unit (SPBS #4). Ms. Brown was very concerned, particularly when the sacks that were split were ordered back to Ms. Brown's unit. She shared these concerns with Sharon Bell. Ms. Brown stated she submitted a request for light duty, but was denied, yet others who requested light duties were assigned office duties.

The stress was so great that other supervisors and employees were trying to help Ms. Brown, but Edna Gray and Nathan Griffin appear to have prevented this from happening. Ms. Brown's level of pain was continuing to rise. The pressure was inordinately high. Ms. Brown tried to keep up, even dumping the mail on the belt herself. This really did not help as more and more mail was being brought to her unit. Ms. Brown felt helpless, hurt, her heartbeat increased and her entire body hurt. She was very apprehensive.

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

17

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

On August 28, 1999, Edna Gray ordered Ms. Brown to meet her in her office. Ms. Brown asked to have her representative with her. Ms. Gray refused. Ms. Brown was afraid to go into the office alone for she knew Ms. Gray was trying to build a case against her and trying to take some type of disciplinary action against Ms. Brown. Ms. Brown was "nervous," upset, her mouth was dry, she was nauseous, her head was splitting with pain and she was crying and could not stop. She felt even more pain because Ms. Gray could see that she was upset. The stress level for Ms. Brown continued to mount that day, late in August, 1999. Ms. Brown had pain in both temples and her neck. She was having trouble breathing, she was shaking, trembling, had little-to-no control over her emotions and she was becoming weak.

With Ms. Brown being in this state, Ms. Gray continued and gave a direct order for Ms. Brown to go to Ms. Gray's office. At this point, Ms. Brown "blacked out." She does not remember what else occurred. When Ms. Brown came to, she was on the floor and the nurse was giving her oxygen. She apparently remained on the floor for around thirty minutes. She states she injured her head, neck, back, right arm and legs (particularly her right leg.) An ambulance was called and Ms. Brown was taken to the Kaiser ER where she was treated for head trauma, facial injuries, orthopedic difficulties, vasovagal syncope, and stress.

The above overview of Ms. Brown's history of onset of disability is just that: an overview. Examples are given, however, they

JEANNE L. RIVOIRE, Ph.D.
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Oakland Ca 94612

18

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

are just that: examples. In reality, during at least the last three to four years there were problems and difficulties on almost a daily basis.

It should be noted that Ms. Brown has attempted in many ways to seek appropriate remedies to her situation throughout the years. However, it appears to have been to no avail. In fact, it probably added to and increased her very stressful work environment. It should also be noted that, from all indications, throughout this entire time period that she followed the rules, regulations, and guidelines to effect any remedy that was available to her. At best, she was ignored, but in many cases she was further abused and humiliated.

3.00. Social and Family History:

Family History: Ms Brown was born in Arkansas, the next to the oldest child in a sibship of ten children consisting of six boys and four girls. Her brothers are all in the Bay Area, all are working, and all are in good health. Two of her sisters are married and have families. Apparently, one sister died of cancer. Her mother passed away in 1989, when she was sixty-five years of age. She apparently died of the effects of diabetes. Her father died in 1998 when he was around seventy-five. She does not know what caused his death. He had his own auto

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

19

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

wrecking business and one of her brothers still operate this facility. Ms. Brown states that she has always had a very supportive family and they remain a close-knit one to this day.

Educational History: Ms. Brown completed her GED in 1978 through Laney College in Oakland; California. She went on to get an Associate of Science degree in Industrial Management from Merritt and Laney Community Colleges in 1979. Ms. Brown states that she likes school and enjoys learning.

Occupational History: Ms. Brown has been employed in the United States Postal Service since August 18, 1965. She started as a Distribution Clerk. In 1970, she was promoted to Sacksorting Machine Operator. She worked in this position for eight years. During this period, she was intermittently detailed as a Sack Sorting Machine Console Operator. From 1978 until 1986, she worked as a Personnel Clerk, and then as a General Clerk in the Claims and Inquiries Section and in the Safety Office. While working in the Safety Office, she was also detailed intermittently to Safety Specialist, a management position. She was promoted to a Supervisor position in the late eighties. She later was promoted to Supervisor,

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

20

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

Distribution Operations, which really is the same job with a different title.

Ms. Brown, for the past ten years, has been subjected to systematic, cumulative stress, which she eventually was unable to endure. This cumulated in August, 1999 when she had a vasovagal syncope, stress induced. She has not worked since that time.

Marital History: Ms. Brown was married in 1955 and widowed in 1975. Her husband was a foundry worker who died because of the highly toxic environment in the foundry. There were five children from this union — three daughters and two sons. The daughters all live in Oakland, California. They all are adults. One son died of hepatitis in his early twenties. Her other son is disabled, having suffered a head injury in an accident.

Ms. Brown remarried in 1995. Her present husband runs a painting business in Oakland, California. Ms. Brown feels he has been supportive throughout her trouble experiences with the Post Office.

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

21

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

Tobacco Alcohol, and Drug History: Ms. Brown denies the use of tobacco. She denies the use of alcohol. She denies the use of any recreational drugs. When she does need medication, she takes only prescription or OTC drugs.

Criminal-Legal History: She denies any criminal history. She states she was in a car accident in October 1999. She was on her way to meet with Post Office officials.

Brief Psychiatric History: In 1992-1994, she saw James Lyle, MD for her problems with stress and depression because of the working conditions at the Post Office. She stopped because she could not function with the medications that were prescribed. Ms. Brown was also seen very briefly in 1997 in this office for her problems with the Post Office working environment. She was seen again, in this office, after her episode of August 28, 1999 where she lost consciousness because of so much stress placed upon her by Post Office personnel.

Brief Medical History: Ms. Brown states she had the normal childhood diseases. She had no accidents as a child. She does state she has fallen four or five times at

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

22

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

the Post Office. These did require the services of an Orthopedist. She also has suffered severe headaches for many years and at times was quite dizzy. She has had feelings like she was going to lose consciousness on numerous occasions when the stress was so great while she was trying to carry out her work duties at the Post Office. She also suffered gastrointestinal problems for many years because of job-related stress. She has had nightmares, sleep disturbance upon many occasions because of the severe stress at the place of work. She has had so much stress that her feet and hands actually hurt. She also has had problems with her neck, shoulders, and back as a result of hitting them when she lost consciousness in August 1999.

4.00. Mental Status Examination:

She is oriented as to place and person, but she occasionally has had problems with time. She is a seemingly pleasant woman who just beneath the surface is a very angry person, even to the point of rage. She often internalizes her anger, which then causes her to become very depressed and physically ill. She is easily irritated although she tries very hard to cover this up, however, these feelings often do show through and can be seen. She also shows signs of being highly

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

23

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

fatigued with little energy. She has highly restricted lowered concentration and her mind often goes blank from apprehensiveness.

There are cognitive difficulties with problems of rumination, repeating oneself, some problems with analysis and synthesis. There are also some problems with judgement and there are some memory and confusion difficulties.

There is clearly psychomotor retardation with mental activity often slowed, eventually to the point of immobilization. She often has problems of refocusing from one area to another. She has lowered self-esteem, lowered self-image, and changing self-identity, lowered self-worth, and her affect is quite constricted, though at times labile.

She is somewhat withdrawn. Her ideation is obsessed with despair, fear, rage and ruminations over the past number of years. Her intelligence, although natively above average, has been functionally lowered, undoubtedly because of all the many traumatic experiences she has suffered over the past number of years. She does have some insight.

There have been physical problems of grave stress such as muscle tension, headaches, dizziness, fatigue, diarrhea, loss of energy, rapid heart beat, appetite disturbance, restlessness, trembling and sweating. At times, she has problems swallowing. There is sleep disturbance with dreams and nightmares. She also suffers from

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

2

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

flashbacks. There is also a significant amount of numbness, and there is a history of at least one episode of loss of consciousness (August, 1999).

Ms. Brown can tolerate very little frustration, she feels that her situation is rather hopeless and she sees herself as being almost helpless in the working environment, although she tried for a very long to carry out her work duties. Presently, she has some problems with making decisions, and staying focused or else she is so focused she cannot shift focus.

5.00. Diagnosis According to DSM IV:

AXIS I:

General Anxiety Disorder (DSMIV: 300.02) with Panic Attacks. Basically over a long time period - Marked to Severe level. Over a long period of time.

Major Depressive Disorder (DSMIV: 296.33). Suffered over a very lengthy period of time - Severe level.

Associated Features: Intellectual Deterioration, Some Social Withdrawal, Pain and Suffering.

AXIS II: NONE.

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

25

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

AXIS III: Headaches — frequent and severe, dizziness, fatigue, nausea, vomiting, diarrhea, loss of energy, appetite disturbance, restlessness, trembling, sweating, difficulty swallowing, sleep disturbance, numbness, decreased motor activity, at least one episode of loss of consciousness, suspect many more episodes of near loss of consciousness.

AXIS IV: Severity Of Psychosocial Stressors: Severe (5). Severe employment problems over a very lengthy period of time resulting in severe effects upon Ms. Brown which have caused a severe disturbance of her peacefulness.

AXIS V: Global Assessment Of Functioning (GAF): 40. She has been lower in the past year and only with being away from her hostile working environment has there been any relief. This level, however, is very fragile. There have been serious occupational problems over a long period of time. There are cognitive problems as well as mood problems. There is some slowing of thought processes, and some withdrawal. There are serious problems with self-image, self-worth, and self-identity.

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

6.00. Clinical Course of Treatment Followed (Treatment Program):

A treatment program of anxiety management techniques has been implemented together with cognitive restructuring. Image therapy is also being utilized together with support and reality techniques. Reshaping her focus and re-educating her self-perceptions are also being employed.

The goals of this treatment program include helping her relate her thoughts and feelings about her traumatic experiences, helping to relate her affect to her traumas and learn to manage the anxiety that comes as a result with this relating, encourage her to work through her many griefs experienced and traumatizing experiences at work. She is being helped to implement realistic adaptive actions, helped to work through her feelings of helplessness and hopelessness.

Additional goals include stopping the downward spiral of her depressive thoughts, her panic, and her anxiety. Her feelings of weakness and powerlessness are being worked though with the goal of regaining ways and means to be strong and masterful. These goals are being accomplished through structured mental exercises as well as behavioral experiences.

Cognitive goals are also considered in her treatment plan. Constructive competencies (i.e. her general knowledge base, her problem solving abilities); encoding strategies (i.e. how she appraised

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27

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

her stressful situations or how she misperceived them; and self-regulating systems and plans (i.e. coping style, management style) are all being considered.

A brief summary of the treatment goals includes working through, understanding and integrating her horrific experiences in such a way that Ms. Brown gains from her experiences and adapts to a new identity, has increased, positive motivation, and improves her coping skills. She continues to be helped to manage her emotional responses and work through her grief, her panic, and her anguish.

7.00. Causal Agent:

After a review of Ms. Brown's file, her history, clinical interviews, doctors' reports, friends' reports and psychotherapy, it is concluded that the causal agent of Ms. Brown's harm has been the continuous exposure to a severely hostile work environment at least since the early nineties and especially so since 1996, when she was assigned to another work location (from third floor to first floor). With a review of Section 2.00 on the History of Onset of Illness, one can easily ascertain the traumatic experiences, which Ms. Brown has endured and which have caused her disabling condition. Put another way, if these conditions had not been hostile, destructive and distressing, Ms. Brown would still be working. The supervisory style and interaction between the different levels of management and

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28

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

supervisors at her place of work have been of such a nature as to produce a highly stressful work environment. Her basic symptoms did not pre-exist (1991) and it is not believed that she has a disease or condition which, being in the normal course of progression, would have resulted in these symptoms at this time.

Throughout the cumulative time phase of the Onset of Illness, Ms. Brown tried to cope by using the defense mechanisms of suppression, repression and denial. However, when these defense mechanisms finally weakened and broke down, they became useless and non-functional, leaving Ms. Brown disabled and unable to continue working as well as really being dysfunctional in her personal and social life.

Suppression is the conscious form of self-control by which impulses are kept from expression. Repression is the unconscious form of self-control, which keep impulses from expression. Denial, of course is really not allowing something that does exist to come forth in the conscious mind. Ms. Brown also tried to use logic and reason in many of her situations, however, in most instances she was further abused. Often, all of the defenses do help to allay or nullify the despair and the rage which occur under so much stress from so many areas concurrently thereby fostering physical and financial survival. However, after Ms. Brown had experienced so much stress from so many significant areas over so many years, these mechanisms began to fail her. As time continued and she continued to experience more and more stress, severe anxiety, depression, self-doubt, and pain, her

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29

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

defense mechanisms became less and less effective. Her anxiety became characterized by a preoccupation with rage, apprehensiveness, accompanying physical symptoms as described above. Her depression became characterized by futility, dysphoria, social isolation, memory dysfunction, cognitive difficulties, sleep disruption, hopelessness and helplessness. In sum, her identity has been changed from being a contributing member of her family and to the work force, to a dysfunctional, disabled person.

8.00. Prognosis and Estimate of When Ms. Brown Will Be Able to Return to Work:

Unfortunately, Ms. Brown has already suffered irreparable harm, and for the most part, this is not reversible. In all probability, she will not recover her premorbid condition. Her prognosis is considered guarded at this time. She is presently totally disabled and will be so for the near foreseeable future. Indeed, she does suffer acute, chronic, and pervasive stress. She is also depressed because of the stress, which she has endured for so long at her work environment, such that she has lowered concentration, cognitive difficulties as well as physical overlays.

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30

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

9.00. An Exploration of the Impact of
the Psychological and Psychophysical Conditions of
Ms. Brown's Life Activities Both On and Off the Job:

Ms. Brown's stressful work environment has had a tremendous impact upon her ability to fulfil her work functions. She has problems with maintaining attention and concentration for necessary periods, which interferes with her ability to focus on the work at hand. Her memory problems also interfere with her work or work-like functioning. Upon occasion, she will start projects but has a very difficult time completing them. Further, because of her physical problems, she often has been just too sick to even be at her place of work, let alone focus on the required tasks. She also has problems because of her low levels of attention and concentration to follow instructions. However, stress problems often hinder her in even following written directions, for her mind wanders and she often just "goes blank." Ms. Brown does have the ability to understand these written and oral instructions, but with all of her physical and emotional problems, she no longer has the ability to function at a high enough level to be successful in a work setting, or even in a non-work setting.

Ms. Brown does not have the capacity at this time to succeed in tasks requiring limits, tolerances or standards. Under almost any pressure, she becomes so stressed that with her

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31

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

physical problems as well, it can even be considered as possibly life threatening, or at least life disrupting. She has a very low tolerance level for frustration, which leads to anger, agitation, and often, increased heart rate, diarrhea and cold sweats. She also has little to no tolerance for complying with simple questions or assistance requests. Again, she loses her concentration, her stress becomes too high, her frustration tolerance too low. She can ask questions and she can ask for assistance, but she can hardly wait for the answers because she becomes so frustrated and aggravated.

Ms. Brown also has problems with performing activities within a schedule, maintaining regular attendance and her punctuality is also somewhat limited. She is so stressed and full of anxiety that these functions are severely constricted. She also will occasionally enter into a state of panic when she is pressured to perform under a schedule, have regular attendance, or be punctual. On the other hand, she will simply panic if something should cause her to have a schedule change. Again, her pacing and follow-through is at a rather low level. She also does not have the ability to complete a normal work day/week and perform at a consistent pace. She barely can get through a day performing a minimum of daily activities.

Ms. Brown has lowered ability to perform complex and varied tasks. She is beginning to show significant problems with putting things, situations and ideas together, or taking these

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32

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

functions apart. She tries very hard, but she is seldom successful because of her exceedingly high stress level. There are also sequential problems in analyzing and synthesizing with some confusion, especially when she is highly apprehensive. Under this condition, she often loses track of details, misplaces information. Her ability to perform jobs requiring precise attainment of set limits, tolerances and standards is also highly restricted because of her high level of major stress, anxiety, and agitation which are all combined with her physical problems.

Ms. Brown does have the ability to relate to others beyond giving and receiving instructions. However, this ability is limited because of her high stress and frustration. She is so stressed and in such a state of frustration that she can no longer relate effectively to others in a place of work. Her restricted concentration, her problems with suppression and repression of her anger, anxiety, frustration and stress, her loss of energy and very easily dissipated energy are all influential factors upon her interactions with her co-workers and peer work groups. It should also be understood that this also applies to her various levels of supervisors. In short, she has very little patience, very limited perseverance and very little tolerance for any type of stressful and/or pressured situations, including both work and non-work situations.

Ms. Brown has been highly effective in the past at work activities, requiring negotiating, explaining or persuading.

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33

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

However, she now suffers concentration difficulties, agitation, energy loss, fatigue problems, physical problems involving high blood pressure, stomach problems, headaches, nausea, weakness, faintness, diarrhea and her ability in this area is seen as being very restricted. Further, she is not now able to work in complex situations because of these same factors. Her ability to respond appropriately to evaluation and criticism is a very highly sensitive area for Ms. Brown. In these areas, she can become very upset, and because her defense mechanisms are no longer adequate for effective coping, she is highly constricted in her responses in these areas. Unfortunately, she has many recollections and flashbacks of incidents, which have led to her problems in these areas. Ms. Brown has reduced ability to influence or direct others. Again, her problems with being able to sustain her attention and concentration, her lack of patience, her extreme fatigue, her lack of energy, her restlessness are all influential in this area. Ms. Brown can react appropriately with others in a relaxed setting, but has difficulty under stressful situations and pressured environments.

The ability to recognize potential hazards and follow appropriate precautions is seen as restricted in Ms. Brown, as is her follow-through. She usually sees the results of many of her actions, but with her concentration and attention problems, her loss of energy, her apprehensiveness, and her irritability make her very ineffective in this area. She also has problems in setting realistic goals. She sets goals and plans to do much more

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34

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

in a given time frame than she could possibly achieve or accomplish. She finds she runs out of energy, becomes highly fatigued, easily frustrated, loses her line of thought, stresses easily and is anxiety ridden. Ms. Brown presently also has problems with responding appropriately to changes in her work or work-like conditions. If she does not perceive these changes as being necessary and useful, she becomes upset, highly stressed, excessively apprehensive and greatly frustrated. She often panics and even becomes significantly depressed.

In sum, Ms. Brown's medical condition - psychiatric - psychological problems have made a major impact upon her life activities and on her job. They have equally made an impact upon her activities off the job. Her restricted concentration makes for grave difficulties in her ability to perform simple and repetitive tasks. This is also influenced by severe stress, high apprehensiveness, and low frustration tolerance. She also has limited ability to perform activities off the job, to set limits, tolerances and standards. She often starts things which she has serious problems in finishing. Ms. Brown also has problems off the job in pacing herself. She either has problems with attention, or else she finds herself almost unable to shift her focus. Ms. Brown also has trouble with performing complex and varied tasks at home, because she gets so frustrated, stressed, agitated and apprehensive. Her concentration difficulties distinctly interfere with those processes. Again, Ms. Brown has problems with relating to other people because of these difficulties. Her

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35

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

attention and concentration are greatly restricted. Under any pressure which produces distress, she becomes highly upset, her body hurts, and her heartbeat increases. Her muscles have been so taut for so long, she states that even to think about the long years of stress makes her body become numb. Her patience is Very low, her frustration tolerance is extremely limited, she has no energy, and she is very fatigued. She reacts to stress with her whole body and, at least upon one occasion, has lost consciousness. Indeed, she is not capable now or in the near foreseeable future of fulfilling the required duties of her position at the Post Office.

She also has numerous physical problems that are not conducive to success in a work setting. There are back, neck, and shoulder problems. She has substantial stomach problems as well as problems with diarrhea. She has problems with sleeping, and problems with eating for often her esophagus tightens and she has a great deal of nausea. She has almost daily headaches and even her feet burn from the stress.

It is hoped that the above information will be helpful to you in understanding the severe nature of Ms. Brown's illness which has been caused by her working environment throughout almost all of the

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36

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

ability to influence others off the job is seen as being very limited. At home, her directions are often seen as confusing and indecisive. She also does not see potential hazards in off the job settings. Again, she has difficulties with directing, controlling and planning ahead all of her off the job activities.

Basically then, the impact of Ms. Brown's medical condition have left her severely restricted in both her on and off the job life's activities. This involves both her emotional and physical difficulties. It involves her problems with sleeping, eating, concentration, irritability, lack of energy, high fatigue, restlessness, the very high level of stress, and her low tolerance of frustration. In many ways her life is very restricted, for she does not participate in community activities, recreational activities, or church activities. In short, she is now significantly withdrawn.

10.00. Medical Basis That Prevents Ms. Brown From Attending and Carrying Out Her Work Duties Altogether:

In the previous section, the basis for Ms. Brown's incapacitation has been well established. However, Ms. Brown does have specific work related impairments. She has been stressed for so long that she is no longer able to carry out her work duties in her present condition. She is depressed, her

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37

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

nineties and especially the last three or four years. Appendices A and B have been included for your information.

Sincerely,

S/
Jeanne L. Riviore, PhD.
California Licensed Psychologist

CF:

1. Lamont Allen, LTD
2. Johnnie Brown

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38

SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

Appendix A

Medically Documented Persistence:

Anxiety Syndrome:

1. She has generalized persistent anxiety accompanied by muscle tension, autonomic activity (diarrhea, nausea, cold, increased heart beat, etc.), apprehensiveness and increased vigilance and scanning (jumps when telephone rings, door closes etc.).
2. She has persistent irrational fears in the areas of occupation, social, primary groups. She has fears of many activities (attending meetings, meeting with Supervisory Staff.)
3. She has recurrent panic attacks which manifest by being restless, by flight of ideas. She believes that something awful is going to happen quite frequently, sometimes several times a week.
4. She is obsessed with doom and loss. All are distressful.
5. She has recurrent and intrusive recollections of numerous traumatic experiences which are a source of marked to severe distress. These include the physical dysfunction, and occupational areas.

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SUBJECT: Johnnie L. Brown. SSAN: 429-70-0958 May 12, 2000

Appendix B

Medically Documented Persistence:

Depressive Syndrome:

- a. She has pervasive loss of interest in almost all activities.
- b. She states she has poor appetite.
- c. She has serious sleep problems.
- d. There is Psychomotor Retardation and Psychomotor Agitation.
- e. She is highly fatigued with little to no energy.
- f. She has feelings of worthlessness.
- g. She is highly restricted in her ability to concentrate, to attend, to think. Cognitive difficulties are significant.
- h. She has had thoughts of suicide but states she would not carry them out.
- i. There are some days, upon occasion, in which she is worse, other days better.

September 30, 1999

U.S. Department of Labor P.O.
Box 194730

San Francisco, CA 94119-4730

Re: Johnnie Brown
D/I: 8/18/99
Claim No:
Employer: U.S. Postal Service
Dear Claims Examiner:

The above captioned patient is a 61 year old postal supervisor for the past 34 years who sustained an injury on the above date. She was being harassed by her own supervisor. Apparently this had occurred in the past on several occasions. She was told she had to go to the supervisor's office for a "discussion". In the course of so doing, the patient "blacked out" from the extreme pressure that her supervisor was placing upon her in this situation. The next thing she remembered was that she was lying on the floor and was being given oxygen. Apparently there was a nurse from the facility there to help her. She remained on the floor for about thirty minutes_

Number 991 was called and she was taken to the hospital at Kaiser, in Oakland. She was examined there and observed for a period of time. She had some x-rays obtained of her back. She had a lot of back and neck pain, apparently the result of falling to the ground in this incident. She also had leg pain.

The last day she worked was 8/18/99. She has not been able to return to work since that time.

Re: Johnnie Brown

Page 2

September 30, 1999

She has come under the care of a psychiatrist, Dr. Revoir, and has been seeing her once weekly for the past months.

She has continued symptomatic and presents at our office today on 9/27/99. She complains of pain in the neck and low back as well as right lower extremity. The pain is characterized as a nine on a visual analogue pain scale of ten. That is an intensely severe type of pain. She also has symptoms including headaches, dizziness, nausea, difficulty breathing, intermittent vomiting, increased fatigability, difficulty sleeping, nervousness and depression, as well as anxiety and worry and emotional stress symptoms and general loss of enjoyment of life.

The pain is described as sharp, sometimes dull and intermittent in nature. There is burning and radiating into the right lower extremity. She gets some relief by applying heat. Any type of movement tends to aggravate the pain. The pain is aggravated by prolonged sitting, rising from a sitting position, prolonged standing, bending forward or doing any lifting. There is also increased pain with coughing or sneezing. There is no problem with urine or bowel control.

PAST HISTORY:

No previous history of arthritis, gout, kidney or bladder problems, VD, diabetes, tumors, heart problems, constipation, infections or neurologic difficulties.

The patient sustained an injury to her back in 1994 when she fell at work. She had some brief treatment and recovered. Otherwise, the patient has not sustained any significant traumatic incidents involving the head, neck, mid or low back or extremities.

PHYSICAL EXAMINATION:

Reveals a 61 year old normally developed female who is alert and oriented to time, place and person.

Re: Johnnie Brown Page 3
September 30, 1999

She moves slowly and guardedly getting of the examining table and appears to have moderate difficulty doing so.

GENERAL DATA:

Weight:	190 pounds
Height:	5 feet, 7 inches
Temperature:	98.4
Respirations:	20
Pulse:	74
Blood Pressure:	124/90

HEENT:

Pupils are equal and reactive to light. EOMs are intact. TMs are normal. Pharynx is clear. Thyroid is not enlarged. No cervical adenitis is present.

LUNGS:

Clear to percussion and auscultation. No rales or rhonchi are present.

HEART:

Normal sinus rhythm. No murmur or enlargement is noted.

ABDOMEN:

Soft and nontender. Liver, kidneys, and spleen are not enlarged. No masses present. Bowel sounds are normoactive.

PELVIC EXAM:

Exam is deferred, RECTAL EXAM:
Exam is deferred.

Re: Johnnie Brown

Page 4

September 30, 1999

NECK:

There is limited mobility of the cervical spine on forward flexion, side flexion and extension and rotation of approximately 60% of normal. There is 1 to 2+ tenderness and spasm present in the paracervical region from C2 to C7 extending laterally into the trapezius area, as well as suprascapular areas bilaterally. There is no gross deformity present in the cervical spinal area.

DORSAL SPINE:

There is no specific tenderness, swelling or deformity noted in the dorsal spinal area between D2 and D10.

LUMBAR SPINE:

There is limited mobility of the lumbar spine on forward flexion, side flexion and extension of approximately 50% of normal. There is 1 to 2+ tenderness and spasm present in the paralumbar region from L1 to L5. Tenderness extends laterally into the right gluteal region. There is 3+ right sided sciatic notch joint tenderness and 2+ left sided sciatic notch joint tenderness.

There is a straight leg raising test on the right at 35 degrees with 2+ pain reported in the low back. It is positive on the left at 45 degrees with 1+ pain reported. There is a positive L3 stretch test on the right at 10 degrees of 2+ in degree. It is positive on the left at 15 degrees of 1+ in degree.

NEUROLOGIC:

Cranial nerves II through XII are intact. Deep tendon reflexes are 2+ and symmetrical at the triceps, patellae and Achilles. There is no evidence of sensory or motor deficit of the upper or lower extremities. Babinski is negative bilaterally. Gait is fairly normal.

Re: Johnnie Brown Page 5
September 30, 1999

DIAGNOSES:

- 1) Acute sprain of the cervical spine, post traumatic.
- 2) Acute sprain of the lumbosacral spine, post traumatic.
- 3) Paravertebral myofasciitis with persistent myofascial pain syndrome.
- 4) Psychological acute stress injury secondary to work related incident.
- 5) Rule out disc injury in the cervical and lumbar spinal area.

DISCUSSION:

The patient is a 61 year old post office supervisor who sustained injuries as described above. She is now significantly symptomatic in the neck and low back region. She also has signs of right lower extremity radiculopathy. At this time, I am recommending the patient have a MRI of the lumbar spine as soon as possible. Please authorize this. She will continue being treated by Dr. Revoir. We are going to send for the records from Kaiser facility in Oakland.

The patient will benefit from physiotherapy for her neck and low back injury of a conservative nature. Please authorize this with myofascial release, surface electrical stimulation techniques with hertz parameter settings between 2 hz and 200 hz, neuromuscular reeducation, manipulative and/or adjustive therapy. This will be for the next eight to ten weeks.

The patient is not permanent and stationary at this time. Her estimate of permanent and stationary status would be 1/02/00.

Re: Johnnie Brown Page 6
September 30, 1999

Please call or correspond if you have any further questions in this matter.

I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and except as noted herein, that I believe is to be true.

In accordance with Labor Code, Article 5701 (0) 1 effective July 16, 1993, there has not been a violation of Labor Code, (a) 139.3, and the contents of this report are true and correct to the best of my knowledge. I verify under penalty of perjury that the foregoing statement is correct and the total time that I spent preparing this report is true and correct, and I declare under penalty of perjury that my attached claim for services is true and correct.

Yours truly,

s/

Jonathan Francis, M.D.

Diplomate, American Board of Orthopaedic Medicine

Fellow, American Academy of Pain Management

Diplomate, American Academy of Disability Evaluating Physicians

JF/dt

cc: Dr. Revoir

JAMES R. LILES, M.D., INC.
BOARD CERTIFIED PSYCHIATRY
10850 MAC ARTHUR BLVD.
OAKLAND, CALIFORNIA 94605
TELEPHONE 569-9334

November 17, 1997 EXHIBIT #79-B

TO: All Concerned Regarding Treatment for
Johnnie L. Brown
4851 Walnut Street
Oakland. CA 94619-2558
SSN: 429 70 0958

INITIAL TREATMENT APRIL 29, 1992
TREATMENT ENDNG NOVEMBER 5, 1997
SUMMARY OF BILLING STATEMENT:

4/29/1992	Initial Comprehensive Evaluation	125.00
5/20/1992	Psychotherapy	90.00
5/27/1992	Psychotherapy	90.00
6/3/1992	Psychotherapy	90.00
6/9/1992	Psychotherapy	90.00
6/17/1992	Psychotherapy	90.00
6/24/1992	Psychotherapy	90.00
6/26/1992	Psychotherapy	90.00
7/15/1992	Psychotherapy	90.00
7/22/1992	Psychotherapy	90.00
7/30/1992	Psychotherapy	90.00
9/2/1992	Psychotherapy	90.00
9/23/1992	Psychotherapy	90.00
10/14/1992	Psychotherapy	90.00
4/3/1993	Psychotherapy	90.00
5/6/1993	Psychotherapy	90.00
11/07/1994	Psychotherapy	90.00
10/30/1995	Psychotherapy	90.00
11/7/1995	Psychotherapy	90.00

PAGE TWO

5/14/1996	Psychotherapy	90.00
6/11/1996	Psychotherapy	90.00
11/11/1996	Psychotherapy	90.00
1/3/1997	Psychotherapy	90.00
1/22/1997	Psychotherapy	90.00
11/5/1997	Psychotherapy	90.00
<u>TOTAL</u>		\$2160.00
PATIENT PAYMENTS		<u>1275.00</u>
TOTAL DUE		885.00

s/
James R. Liles, M.D.
Board Certified

Make Check payable: James R. Liles, M.D.
Board Certified Psychiatry
10850 MacArthur Blvd #300
Oakland, CA 94605

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

January 27, 1997

TO WHOM IT MAY CONCERN

RE: Johnnie L. Brown
DOB: 01-05-38
SSN: 429-70-0958

Ms. Johnnie L. Brown is a patient in this office for her emotional problems of anxiety and stress from which she suffers and which were caused by her treatment while working at her job at the United States Post Office. She is presently working very diligently in her psychotherapy, however, she will not be able to return to work until at least March 01, 1997 at which time she will be reevaluated for her progress.

Thank you for your consideration of this injured worker.

Sincerely,

s/

Jeanne L. Rivoire, PhD

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

TO WHOM IT MAY CONCERN

RE: Johnnie L. Brown
DOB: 01-05-38
SSN: 429-70-0958

Johnnie Brown is a patient in this office for her stress related injury which occurred August 18, 1999 while she was in the process of carrying out her work duties. She is highly motivated and goal directed in her therapy but she is unable at this time to perform her normal and customary work duties. It is not expected that she will be able to do so until at least November 15, 1999. At that time a review of her condition will be made and this information forwarded to you.

Sincerely,

s/

Jeanne L. Rivoire, PhD

JEANNE L. RIVOIRE, Ph.D.
California Licensed Psychologist
1970 Broadway, Suite 610
Oakland Ca 94612

June 12, 2000

TO WHOM IT MAY CONCERN

RE: Johnnie L. Brown
DOB: 01-05-38
SSN: 429-70-0958

Johnnie Brown continues as a patient in this office for her stress related injury which culminated August 18, 1999. This injury is industrial and is one that has been suffered over a long period of time. She continues to work very hard and is highly motivated in her psychotherapy, however, at this time she is unable to carry out her normal and customary work duties. It is not expected that she will be able to return to work until at least October 01, 2000, however, even this date carries a high degree of uncertainty. She will be evaluated again at that time.

Thank you for your cooperation with this dedicated worker who now is totally disabled.

Sincerely,

s/

Jeanne L. Rivoire, PhD

August 24, 1999

Exhibit #79

To: The U. S. Department of Labor

Edna Gray who assigned as by supervisor on 08-18-99, began to cause me emotional distress, sexually harass me at 8:00 a.m., by reminding me that I will continue to work short, she will not allow me any help, telling me to work sacks of mail that does not contain enough mail to be processed on the Small Parcel Bundle Sorting (SPBS) machine, by refusing to all me to follow Postal Procedures in working the oldest dates first, by singling me out and using a separate set of rules for me only; by harassing the employees in the unit, forcing me to do two (2) jobs (dumping mail on the belt), because she would not give me no help.

She pushed me as far as I could be pushed, when she came up to my desk at 10:30 a.m., stating that I must go to her office for a discussion, I blacked out from the extreme pressure that she had caused me, the next thing I remember, is the nurse was giving me oxygen . I remained on the floor at least 30 minutes after they call 911 to take me to the hospital. When I fell from the black out, I injured my head, neck, back, right arm and legs. My right leg is continuing to throb all the way to my foot and toes. It is difficult for me to walk without stopping, trying to shift the pain. My head is also, continuing to be in pain

s/

Johnnie L. Brown,
Supervisor, Processing and Distribution
1675 7th Street
Oakland, CA 94615

Appendix L

January 12, 2009

Supreme Court Of The United States Washington D.C. 20543

The following information will explain (exhibit 44, a chart which shows a weekly schedule of employees that were assigned to Petitioner's (180) unit before she exchanged jobs with Mr. Buckingham). Petitioner's evidence showing that she was discriminated against due to her age and sex, when on November 14, 1998, while she was assigned to the 180 opening unit she was assigned two (2) casuals. (page 1).

Exhibit #44, a weekly schedule chart which shows the weekly schedule for SPBS#1, the unit that Petitioner was move to on November 21, 1998, she was assigned three (3) casuals. Petitioner's evidence showing that she was discriminated against due to her age and sex, when she was moved to SPBS#1. (Page 2)

Exhibit #44, a weekly schedule chart of employees who were assigned to Louis Buckingham's unit (180), on November 21, 1998, when he exchanged jobs with Petitioner, he was assigned 18 casuals (page 4). Evidence that Mr. Nathan Griffin, Senior Manager, Processing and Distribution and Edna Gray, Acting Manager, Distribution Operation discriminated against Petitioner due to her age and sex, when the Respondents treated supervisor Buckingham and Supervisor, Joe Perkins more favorably than Petitioner, two younger male supervisors. Regular employees' schedule (page 3).

Exhibit #45, Shows the weekly schedule chart for the Outward unit 044/044 unit, on November 21, 1998, the unit that was supervised by Joe Perkins a younger male supervisor, who was treated more favorably than petitioner when he was assigned ten (10) casuals. Discrimination due to Petitioner's age and sex.

Exhibit #72, Shows a daily activity report chart, with notations by petitioner that on August 12, 1999, Edna Gray ordered petitioner to give Supervisor Louis Buckingham her Jitney, Petitioner was unable to dispatch her mail. Also, Mr. Buckingham was required have his jitney driver pick up a jitney at the beginning of the tour. Proof of discrimination due to Petitioner's age and sex. Mr. Buckingham was treated more favorably.

Sincerely,

s/

Johnnie L. Brown

Appendix M

January 12, 2009

Supreme Court Of The
United States Washington
D.C. 20543

The following information will explain (exhibit #74), The supervisor's Weekly Assignment chart, which shows (examples only) that Louis Buckingham's Scheduled Days Off (SDO), was changed to Sat & Sun and Francis Webb's (SDO) were changed to Mon & Tue, Sat & Sun & Sun & Mon. And Ms. Gray denied petitioner's request to her change her (SDO). Also see Ms. Gray's signed EEOC investigative Affidavit, (Appendix L), when she stated that she would not change Petitioner's (SDO).

Acting Manager, Distribution Operations, Edna Gray, discriminated against Petitioner due to her age when she treated Francis Webb, a younger female supervisor more favorably than Petitioner. And Edna Gray, also, discriminated against Petitioner due to her age and sex when she treated Louis Buckingham a younger male supervisor more favorably than Petitioner.

Sincerely,

s/

Johnnie L. Brown

Petitioner

4851 Walnut Street

Oakland CA 94619-2558

Appendix N

November 27, 1998 Petitioner's evidence that she notified Bill Henderson,
Bill Henderson, Postmaster General that she was being harassed and
Postmaster General the Respondents was continuing to make her life
475 L'Enfant Plaza become a living hell, he did not correct The problem.
SW Washington D.C
20260

Dear Sir:

I, am a black woman supervisor, (age 60), I have been employed at the Oakland P & D Center, for thirty-three (33) years. (11-19-98, at this moment my eyes are filled with tears, my heart is heavy. I am unable to eat, will get not sleep tonight, because I love my job, I am an excellent worker. However, my supervisors are making it extremely difficult for me to continue working.

Every day, I feel, as if I am forced to endure any more sexual harassment, I will have a heart attack. I often leave the floor and cry.

I counted the employees in the manual cases (51 employees), on 11-19-98, I had fourteen (14) employees assigned to my unit of which nine (9) were clerks. I need at least ten (10) clerks to run the SPBS unit smoothly.

However, Sharon Bell advised me to send one of the nine (9) employees to the manual cases where they already had 51 employees.

The SPBS#1 machine is Sharon Bell's assignment, she is on a detail, to Manager Distribution Operation, (AMDO). The clerks in the unit also, worked for Sharon Bell, they stated that when she was in charge of the unit, she used ten (10) clerks every day when they were available.

I was assigned to the SPBS#1, machine on November 21, 1998. When I was assigned to the 180 unit, Sharon assigned two (2) casuals to that unit. On 11-21-98, the same day, that I was assigned to the SPBS machine she assigned (28) casuals to the 189 unit and no casuals to the SPBS unit.

On 11-19-98, Marcel Lewis asked me to work two hours overtime, because she needed to go home at 3:30 p.m. Sharon Bell stated that it was not Marcel's decision, she would not allow me to work overtime, she forced Marcel to stay. On 11-21-98, I requested to see Mr. Griffin, regarding this matter, he refused to see me. See attached request and weekly schedules for the 180 unit and SPBS #1.

The sexual harassment must stop. I don't know how much more I can bare. This treatment started in 1991 and has continued to present, and is continuing to cause my life to become a living hell. Their deliberate violation of postal rules and regulations to cause me pain. They continues to make my job more difficult by forcing me to use less

employees to get the job done.

When I asked to work extra hours, I am told that I cannot work, but they assigns 204-Bs to work in my higher level position.

The Postal Managers had admitted through supervisory management training that they are sexually harassing me and that they are liable for punitive and compensatory damages.

I requested to work on my holiday 11-26-98. Sharon Bell and Mr. Griffin would not allow me to work. Elizabeth Mitchell (204-B), worked and they would not allow me to work my SDO on 11-27-98, Ms Mitchell worked her SDO in my unit, also, the holiday was also, her SDO.

Can you imagine how humiliating it makes me feel, if a 204-B tells me that my supervisor, Edna Gray, has asked her to work her SDO Friday, which is also, my SDO, and my supervisor did not offer the time to me. In addition, I submitted my request in writing to Edna Gray, she did not respond to my request.

I need help. Please help!

Sincerely,

s/

Johnnie L. Brown

Supervisor, SPBS#1

1st Floor

1675-7th Street

Oakland CA-2558

EXHIBIT #73

August 12, 1999

Nathan Griffin,

Senior, Manager Distribution Operation VIA: Edna Gray

The constant sexual harassment, emotional distress and discrimination that you are causing me to endure has become unbearable.

On July 20, 1999, I paged Edna Gray all day, beginning at 8:00 a.m., she would not answer my page. Finally at 2:10, I asked the general clerk to page her and that is when she responded to my page. I had been ill all day, that is why I was trying to contact her. I left work at 2:00, p.m. after she answered page.

The other Tours are continuing to leave large volumes of mail around the machine for dispatching. Due to the shortage of personnel, it has become necessary for me to work and move the mail out for dispatch. (help the mail handlers and clerks). I am short of clerks and mail handlers on a daily basis. This is causing me emotional distress and causing the employees emotional distress.

I called in again and asked Edna Gray to change my days off from Fri/Sat to Sat/Sun. She stated that she could not do that because she is short of supervisors. Victor Bolan, 204-B, who is assigned to my unit, is working in the 180 unit relieving, Louis Buckingham could be assigned to my unit, when I am off, rather than to relieve Mr. Buckingham. I was assigned to the 1' floor, May 1996, my days has never been changed.

Louis Buckingham was assigned to the 1' floor, 1998, his days has been changed from Sat/Fri to Sat/Sun. Francis Webb's days has been changed three (3) times within the last, ninety (90) days, from Mon/Tue, to Sun/Mon, from Sun/Mon to Sat/Sun. Your discrimination, sexual harassment and infliction of emotional distress on me has become more noticeable. Whenever, I submit any request, the answer is always no.

All of my employees and supervisors are aware of your unfair treatment toward me,

Petitioner's evidence that she notified Mr. Griffin, Senior Manager, Processing And Distribution that she was being harassed and the Respondents was continuing to harass her and force her to work with fewer employees, and discriminate against her due to her age and sex by treating supervisors younger than Petitioner.

which makes it even more difficult for me to endure. Whenever, employees are looking at me and they know how I am being treated. I feel sad, hurt, as if I wish, I could find a trap door and fall through the floor. When I walked into the building on 08-01-99, Elizabeth Mitchell, 204-B, was paging me. She stated that she had been instructed to cover my unit, SPBS #1, if I did not report to work. She did not have an assignment, because, Clytee Johnson, Manager, Distribution Operation, assigned her to work on SPBS #3, on the 2nd floor.

Ms. Mitchell or Victor Bolan could be assigned to SPBS #1, on my days off if they were changed to S/S. I have more seniority than Francis Webb or Louis Buckingham, yet I am always, told no, whenever I submit a request. Please reconsider my request for SDO change.

Thank You,

s/

Johnnie L. Brown

Supervisor, Processing & Distribution

SPBS#1

Oakland CA 94615

EXHIBIT #77

February 3, 1999

Carol Miller, Plant Manager VIA: Nathan Griffin
VIA: Sharon Bell

Mrs. Miller, I would appreciate it very much, if you would tell Mrs. Bell to stop sexually harassing and discriminating against me. When she favor her male supervisors over me, that is sexually harassment. She came into my unit, wrote the attached POD-13. I have been advised by you that, I could work old dates on the pallets also.

I explained to Ms. Bell that , if I work sacks only the belts will stay empty, due to the large volume of loose mail that, is in the sacks. She is deliberately trying to cause my production to decrease, to allow her, to cause me more pain, please respond in writing.

Thank You,

s/

Johnnie L. Brown
Supervisor, Distribution Operation
SPBS#1
Oakland CA 94615

PS: Joe Perkins is working mail dated 02-01-99, my mail is dated 02-02-99. he always has delayed mail, I don't see Sharon Bell harassing him.

Petitioner's evidence that she notified Mrs. Carol Miller and Mr. Nathan Griffin, that Supervisor, Sharon Bell was discriminating against her due to sex, and she instructed her to STOP working Pallets and work sacks only. Also, retaliation for filing EEOC charges.

EXHIBIT #77

To: Johnnie L. BTOWII

Johnnie stop working the pallets and work sacks only

Carol Miller, Plant Manager

VIA: Nathan Griffin

VIA: Sharon Bell

Mrs. Miller, I would appreciate it very much, if you would tell Mrs. Bell to stop sexually, harassing and discriminating against me. When she favor her male supervisors over me, that is sexually harassment. She came into my unit, wrote the attached POD-13. I have been advised by you that, I could work old dates on the pallets also.

I explained to Ms. Bell that if I work sacks only the belts will stay empty, due to the large volume of loose mail that, is in the sacks. She is deliberately trying to cause rny production to decrease, to allow her, to cause me more pain, please respond in writing.

Thank You,

s/

Johnnie L. Brown

Supervisor, Distribution Operation

SPBS#1

Oakland CA 94615

PS: Joe Perkins is working mail dated 02-01-99, my mail is dated 02-02-99. he always has delayed mail, I don't see Sharon Bell harassing him.

Petitioner's evidence that she notified Mrs. Carol Miller and Mr. Nathan Griffin, that Supervisor, Sharon Bell was discriminating against her due to her se and she instructed her to stop working pallets and work sacks only.

EXHIBIT #75

August 15, 1999

Mr. Nathan Griffin,
Senior, Manager Distribution Operation Oakland Processing and
Distribution Center 1675 7th Street
Oakland, CA 94615

Dear Sir:

The following information is submitted regarding the California
Distribution mail that we are processing from S-19.

Are you aware that Mrs. Carol Miller has instructed the
employees on SPBS 114 to process 50% of the California
Distribution Sacks of mail?

They have not been processing them timely. On Thursday
08-12-99 mail was left by them dated 08-10-99.

Sincerely,

s/

Johnnie L. Brown
Supervisor, Distribution Operation
1675-7th Street
Oakland CA 94615

Appendix O

January 12, 2009

Supreme Court Of The United States
Washington, D.C. 20543

The following information will explain (exhibit #78), The Supervisors' Weekly Assignment charts three (3), pages 1 through 3, which verifies Petitioner's evidence that Arlene Colbert, a younger Caucasian female supervisor was treated more favorably when she was allowed to work on a light duty assignment, while petitioner's request was denied. Also, Ms. Colbert was not required to work sacks of mail only, even though she was assigned to SPBS #4.

In addition, Ms. Colbert was a similarly situated supervisor, since she was assigned to the same job as Petitioner.

Sincerely,

s/

Johnnie L. Brown

Petitioner

4851 Walnut Street

Oakland CA 94619-2558

March 3, 1997

JOHNNIE BROWN SS# 429-70-0958
SDO EXPRESS MAIL TOUR II
OAKLAND P & D CENTER

This letter is to acknowledge receipt of your Medical Certificate submitted, in which your doctor restricted you to work five hours a day and suggested that it would be best if you could work hours that produce the least stressful conditions possible and would not be close to rush hours.

Please be advised that your request is denied. There are no hours in a supervisor capacity that is not stressful and there are no hours that do not request focus on the operation. You may use leave of your choice and the absence will be recorded as FMLA.

s/
Nathan Griffin
SMDO TOUR II
OAKLAND P&D CENTER

March 7, 1997
Nathan Griffin, SMDO
VIA: Sharon Bell, AMDO
1675 7th Street, 1st Floor
Oakland, CA 94615 - 9706

The following is submitted because as a Postal Employee with thirty-one (31) years, seven (7) months of service I am requesting a light duty assignment:

I feel, that consideration for a light duty assignment should not be based on me as a supervisor, but as a Postal Employee.

I am aware that you have approved light duty assignments or request for many employees for supervisors and other postal employees for five (5) hours or less.

I would appreciate it if my request could be approved, as my doctor will not approve your request for me to work eight (8) hours.

On 03-07-97, when you informed me that you were not able to accept my request for five (5) hours per day, you also advised me that, I could request a light duty assignment.

I have experience and I am able to work in the following offices: 1st Floor, 2nd Floor, 3rd Floor, Safety, Personnel Services, Claims & Inquiry and in Plant Support.

I feel, that if I am assigned to a light duty assignment away from the supervisory stressful environment, it will be easier for me to do my job, or less stressful.

I wish to be assigned within my assigned tour of duty 6:50 a.m. to 3:50 p.m.

s/
Johnnie L. Brown
SDO Express Mail/180 Units, T-2
1675 7th Street
Oakland CA 94615-9706

March 18, 1997

SRMDO: NGRIF1N: 94615-9702
LIGHT DUTY REQUEST - RESPONSE

JOHNNIE BROWN
4851 WALNUT STREET
OAKLAND CA
94619-2558

This letter will acknowledge receipt of your request for light duty assignment. Please be advised that every effort was made to accommodate your request, and unfortunately a light duty assignment was not available. If in the near future, a light duty assignment become available. You will be notified immediately. If your restrictions should change, please notify your MDO. I wish you a successful and speedy recovery.

s/
Nathan Griffin
Senior manager Distribution OPRNS T2
Oakland P&D Center

Appendix P

January 12, 2009
Supreme Court Of The United States
Washington, D.C. 20543

The following information will explain (exhibit #48, hourly productivity chart), which shows Petitioner's evidence that she was forced to work short, and work large volumes of mail with a smaller number of employees on SPBS#1. On 11-22-98, she was required to dispatch approximately 70 containers of mail left by Tour 1, when she began her tour at 7:00 a.m., in addition to meeting their goal of 1100 pieces of mail per console per hour working short.

On 12-29-98, (Ex#48), An hourly productivity chart, which shows Petitioner's evidence that she met and exceeded the Respondents goal of 1100 pieces on that day she processed 1154 pieces per hour per console, while she continued to work short. Also, a chart which shows the number of employees that were used on that day to process the mail on the SPBS machine, continuing to work short.

On 12-30-98, (EX#48), An hourly productivity chart, which verifies that Petitioner met and exceeded the Respondents goal of 1100 pieces, continuing to work short. She processed 1175 pieces per hour per console on subject date. Also, a chart showing the number of employees that was used, continuing to work short.

On 07-12-99, (Ex#69), A Daily Activity Report, which verifies petitioner's, evidence that she was forced to continue to work short, and work large volumes of mail, with a smaller number of employees, (a smaller number of employees than the other supervisors in her unit). Louis Buckingham, Arlene Colbert, and Joe Perkins. Petitioner processed 1115 pieces of mail per hour, per console, because she was fearful of being fired, she was required to help the employees process the mail on a daily basis, because the Respondents would not allow her adequate employees to get her job done.

s/

Johnnie L. Brown
Petitioner
4851 Walnut Street
Oakland, CA 94619-2558

Appendix Q

EXHIBIT #53

To: Johnnie L. Brown: Johnnie, even though you ran (4) Consoles and (3) Consoles for two(2) hours the hourly through put per Console is to low. You need to monitor your operation and also, advise me how you plan to increase your P.P.H.

To: Sharon Bell, Acting, Manager Distribution Operation, 1675-7th Street, Oakland, CA 94615. The through put pieces per hour, were based on the total run time of (6) hours, thirty (32) minutes. However we did not work 6 hours *and* 32 minutes. We needed to subtract the wall clock *time* of two (2) hours and twelve (12) minutes. The total work hours was 4.2. Console #1 ran two (2) hours, total processed - 1963 pieces per hour. Console #2 - #4 ran 4.2 hours at 3035 pieces per hour. Total pieces per hour equals 1190, which is 90 pieces above goal of 1100 pieces per hour, per console.

Sincerely,

s/

Johnnie L. Brown
Supervisor, Distribution Operations
First Floor, SPBS#1
Oakland, CA 94615

February 3, 1999

This information, verifies that petitioner, met and sometimes exceeded her goals, 011 a daily basis, because she was filled with fear of being removed from the Postal Service. AlThOugh, Lockheed Martin, the designer stated that The. SPBS machines were designed to process from 650 to 1000 pieces per console, Petitioner was forced to process over 1100 piecece per hour per console, working short.

February 3, 1999

EXHIBIT #53

To: Sharon Bell
Acting, Manager Distribution Operation
1675 - 7th Street
Oakland, CA 94615

The following information is submitted in response to the attached request regarding, Increasing my P.P.H.

The Throughput pieces, pieces per hour, were based on the Total run time of 6 hours, 32 minutes.

However, we did not work 6 hours and 32 minutes. We needed to subtract the wall clock time of two (2) hours and twelve (12) minutes. The total work hours was 4.2. Console #1 ran two (2) hours, total pieces processed - 1963 pieces per hour.
Console #2 - It ran 4.2 hours at 3035 pieces per hour

Total pieces per hour: 1190. Which was 90 pieces above goal, of 1100 pieces per hour, per console.

Sincerely,

s/

Johnnie L. Brown
Supervisor, Distribution Operations
First Floor, SPBS#1
Oakland, CA 94615

This information, verifies that Petitioner, met and sometimes exceeded her goals, on a daily basis, because she was filled with fear of being removed from the Postal Service. Although, Lockheed Martin, the designer stated that The SPBS machines were designed To process from 650 to 1000 pieces per hour per console, Petitioner was forced to process over 1100 pieces per hour per console, working short of employees.

Appendix R

Johnnie L. Brown
4851 Walnut Street
Oakland, CA 94619-2558

Plaintiff in Pro Per

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Johnnie L. Brown) Case No: 03-1248 MD
Plaintiff

Calculations Of Lost
Income,
Lost Wages, Compensatory
Damages,
Pain & Suffering & Medical
Bills

John E. Potter, Postmaster
General) United
States Postal
Services Defendant

Trial Date May 25,
2006 Time: 8:45

Year	Earnings Entitled	Annuity Received	Loss Plus Interest
2000	\$54,358.00	\$10,620.00	\$43,739.00
2001.	\$55,489.00	\$32,232.00	\$23,357.00
2002	\$59,861.00	\$33,060.00	\$26,801.00
2003	\$61,124.00	\$33,516.00	\$28,440.00
2004	\$64,124.00	\$30,158.00	\$30,158.00
2005	\$66,292.00	\$34,422.00	\$31,879.00

PRAYER FOR RELIEF

Financial Statement, For Lost Of Income, Wages Lost
Compensatory Damages, Pain & Suffering & Medical
Bills.

1. Wages Loss 1992 = \$7,091.
2. Wages Loss 1997 = \$.8,951.00
3. Wages Loss 08-99 - 08-00 = \$48,745.00
4. Total Wages Loss = \$64,787.00
5. Compensatory Damages \$400,000,
6. Pain & Suffering \$400,000
7. My Medical Bill \$24,380.00

Executed on 25 day of June 2006

s/
Johnnie L. Brown

JOHNNIE L BROWN
4851 WALNUT STREET
OAKLAND CA
94619-2558

Dear Ms. Brown:

The following information is being provided in response to your request regarding your wage loss claim.

You have been employed by the U. S. Postal Service, Oakland, CA 94615-9998 since Aug. 28, 1965.

Your current position is Supervisor, Distribution Operations, Full Time, earning an annual salary of \$47,986.00.

You were off work for a number of hours during the period

If you have any questions, please call Personnel Services at (510) 874-8344.
indicated below which include the rate per hour and the amount accordingly.

DATE	<u>No. OF HOURS</u>		<u>RATE / HOUR</u>		<u>AMOUNT</u>
	<u>Regular</u>		<u>Regular</u>		
04/22/92-06/28/92	376.00		\$18.86		\$7,091.36

If you have any questions, please call Personnel Services at (510)874-8344

Sincerely

s/

Melda D. Laigo
Human Resources Specialist
USPS Oakland District

January 20, 1998

JOHNNIE L BROWN
4851 WALNUT STREET
OAKLAND CA
94619-2558

Dear Ms. Brown:

The following information is being provided in response to your request regarding your wage loss claim.

You have been employed by the U. S. Postal Service, Oakland, CA 94615-9998 -since Aug. 28,1965.

Your current position is Supervisor, Distribution Operations, Full Time, earning an annual salary of \$47,986.00.

You were off work for a number of hours during the period indicated below which include the rate per hour, the overtime and the amount accordingly.

<u>DATE</u>	<u>No. OF HOURS</u>	<u>RATE / HOUR</u>	<u>AMOUNT</u>
	<u>Regular</u>	<u>Overtime</u>	<u>Regular</u>
			<u>Overtime</u>
01/26/97-03/31/97**	352 36	\$23.07	\$23.07 \$8,951.16

**Employee came back to work on March 2 & March 3,1997 & took off work again on March 4, 1997 until March 31,1997

If you have any questions, please call Personnel Services at (510) 874-8344.

Sincerely

s/

Melda D. Laigo
Human Resources Specialist
USPS Oakland District

Appendix S

May 29, 1997

SUBJECT: Proposed Letter of Warning in Lieu of Time-Off
Suspension

TO: JOHNNIE BROWN

SS# 429-70-0958

SDO TOUR II FIRST FLOOR

OAKLAND P & D CENTER

This proposed Letter of Warning is being issued to you in lieu
of a 7-day time-off suspension for the following reasons:

CHARGE #1: FAILURE TO REPORT AN ACCIDENT IN A
TIMELY MANNER

On April 30, 1997, at approximately 3:40 p.m., you came
into the First Floor Office after your tour of duty and stated to
me, "Here" and handed me a PS Form CA-1 and a Item 0-13
with no explanation, and then you immediately left the First
Floor Office. After reviewing the PS Form CA-1 and the
attachment, I noticed that the accident had occurred at 10:45
a.m.. that morning. I paged you to call the First Floor Office
at approximately 3:43 p.m. You responded to the call and I
instructed you to report to the First Floor Office. Upon your
arrival, I inquired as to why you had not reported your
accident that morning and if you were going to seek medical
treatment. You responded by stating, "I was not going to fill
out a CA-1 at first, but I started having pain about 2:30 p.m.,
so I decided to fill out the CA-1." You also stated, "I don't
know what I am going to do. I will let you know tomorrow." You
also affirmed that you were all right. Your reason for not
reporting your accident in a timely manner is unacceptable to
me. You have recently been provided a current copy of the
Oakland P & DC Policy Statements which included:
Employee's Responsibility For On-The-Job-Injuries.
Specifically, if you are injured or become ill from work-related
causes you must report it immediately to your supervisor. A09

CHARGE #2: FAILURE TO FOLLOW PROCEDURES
FOR MEDICAL TREATMENT

A review of the medical certification submitted by you dated May 2:
1997, to substantiate your injury discloses that you were treated for the
injury on May 2 1997. You did not notify me the 10\01g day after your
injury that you needed

Proposed Letter of Warning in Lieu of Time-Off Suspension
May 29, 1997

Page Two

medical attention so that the proper medical authorization forms for treatment could have been provided. I made several phone calls to your residence on May 1, 1997 and left messages on your answering machine for you to contact me. However, you failed to do so, You did not have authorization for medical treatment, therefore you failed to follow proper procedures for seeking medical treatment.

This proposed Letter of Warning is being issued to you in lieu of a 7-day time-off suspension based on the above-cited deficiencies. This letter is also to inform you that you must correct your work _deficiencies. Further, you must demonstrate adherence to Postal Service regulations. Failure to correct your work deficiencies may result in further disciplinary action, including your removal from the Postal Service.

You and/or your representative may review the material relied on to support the reasons for this proposed letter of Warning in lieu of a 7-day-time off suspension at the Labor Relations Office, 1675 7th St. Room 421, Oakland, CA 94615-9401, between the hours of 8:00 a.m. - 5:00 p.m. if you do not understand the reasons for this proposed Letter of Warning in lieu of a 7-day-time off suspension, contact the Labor Relations Office at 510-874-8404 for further explanation.

You and/or your representative may appeal this proposed Letter of Warning in lieu of a 7-day time-off suspension *by* filing an answer within 10 calendar days from your receipt of this letter, either in person or in writing, or both, before Nathan Griffin, Senior Manager Distribution Operations, 1675 7th street, Room 259, Oakland, CA 94615-9997, by appointment. You also may furnish affidavits or other written 'material to Nathan Griffin 10 calendar days from your receipt of this letter. You will also be afforded a reasonable amount of official time for the above purpose if you are otherwise in a duty status. You will receive a written decision after the expiration of the 10-calendar day period for reply. All of the facts in your case, including any reply you submit, will be given full consideration before a decision is rendered.

OCTOBER 31, 1997

FY 97' EVA VARIABLE PAY PROGRAM

JOHNNIE L BROWN
029 4851 WALNUT STREET
OAKLAND CA 94619

CER I IHED# P 888 200

Dear Ms Brown:

This is to advise you that a proposal has been made to exclude you from the FY 97' EVA VARIABLE PAY PROGRAM (Credit Exclusion). The reason for the exclusion is due to your non-duty status in FY 97', and you were issued a Proposed Letter of Warning in lieu of Time Off Suspension for Failure to Report An Accident in A Timely Manner/Failure To Follow Procedures For Medical Treatment dated May 29, 1997.

s/

Sharon M Bell
Acting manager Distributions OPNS
Tour II First Floor
Oakland P&D Center
Oakland, CA 94615-9702

June 4, 1997

Tom Wong
President, NAPS P.O. Box 11352
Oakland, CA 94611

Reference is made to the letter (Proposed letter of Warning in lieu Of Time Off Suspension), which was issued to me on May 29, 1997.

The NAPS representative has my permission to review the files in the Labor Relations Office which regards to the subject letter.

Sincerely,

s/

Johnnie L. Brown
Supervisor, Processing & Distribution
4851 Walnut Street
Oakland, Ca 94619-2558
Telephone Number (510) 436-5665

This letter is petitioner's evidence that she had notified her union reprehensive and the letter should have been rescinded, because Mr. Tom Wong was aware that the letter of warning did not relate to Petitioner's performance. Which also, proves that the union may have working with the Respondents to cause petitioner emotional distress, because the union did not give petitioner any support. Petitioner telephoned Tom Wong on 08-18-99, and he refused to come to the meeting that was scheduled with Mrs. Gray.

30

(2)

FILED
APR 22 2009
OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR PANEL REHEARING

No. 08-1091

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

MRS. JOHNNIE L. BROWN,
PETITIONER

V.

JOHN E. POTTER, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE

PETITIONER, JOHNNIE L. BROWN
PETITION FOR REHEARING

Mrs. Johnnie L. Brown

4851 Walnut Street

Oakland, CA 94619-2558

(510) 689-9341

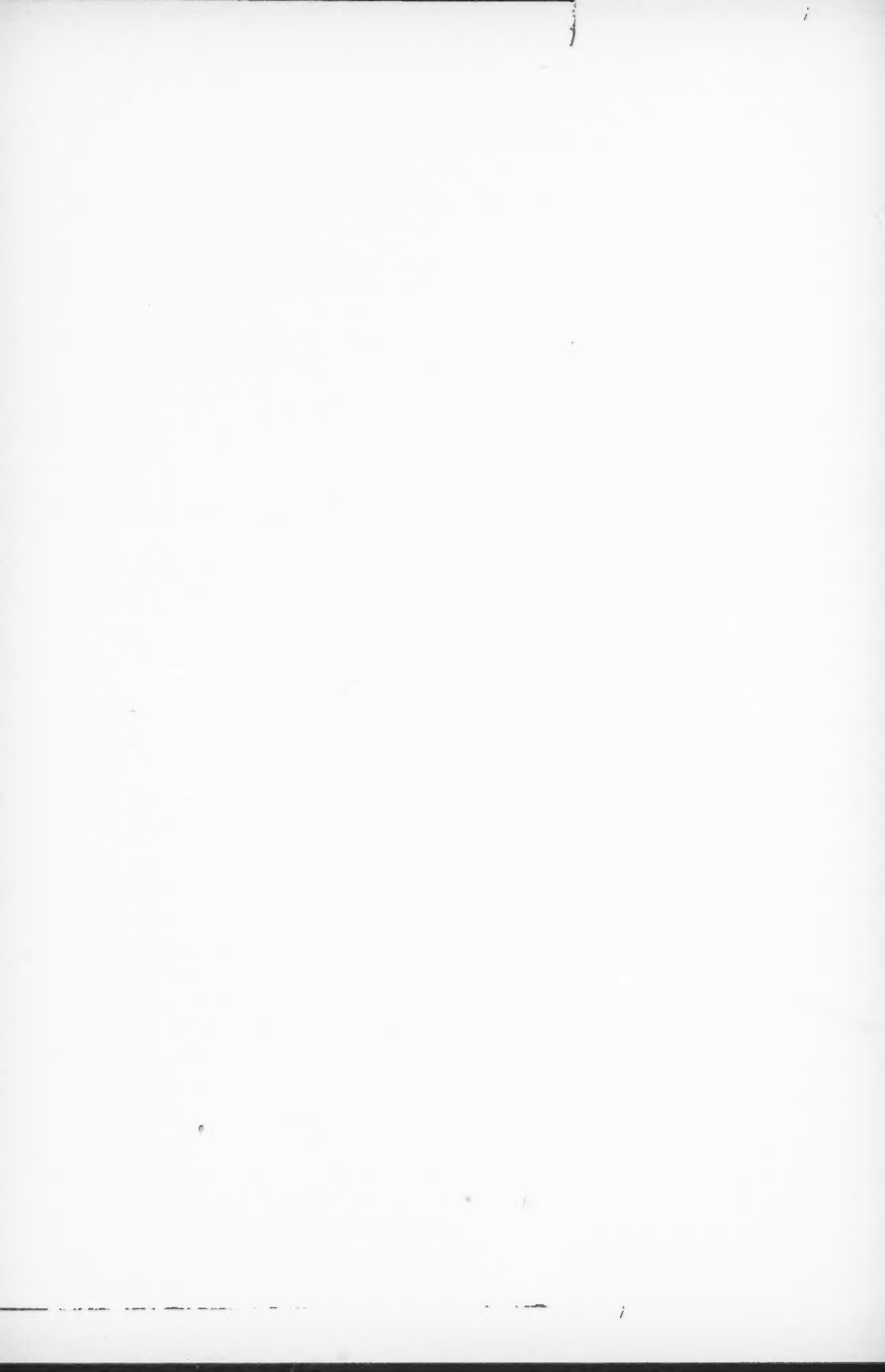


TABLE OF CONTENTS

Certificate of Grounds for Panel Rehearing	1
Statement Of Facts	4
Argument	4
Conclusion	9

CERTIFICATE OF GROUNDS FOR REHEARING
No.08-1091

This petition for rehearing of the order denying a petition for a writ of certiorari is presented in good faith and not for delay. A copy of the panel decision is attached to this petition. I express a belief based on my knowledge of the facts in this case. Specifically, the Court overlooked an important question of Federal Law, that has not been, but should be settled by this Court. Did the Respondents violate Petitioner's Constitutional Rights? Yes. Petitioner's Constitutional Rights was violated, due to the Respondent's disregards for the Federal laws, prohibiting discrimination in employment.

Under Title VII, the ADA, and the ADEA, it is illegal to discriminate in any aspect of employment, including: firing, compensation, fringe benefits; pay etc.

Discriminatory practices under these laws also include: harassment on the basis of race, color, religion, sex, religion, national origin, disability or age; and retaliation against an individual for filing a charge of discrimination.

It is unlawful to discriminate against Petitioner on the Basis of Sex and Retaliation under title VII of the Civil Rights Act, 42 U.S.C. 631 et. and Age Discrimination in Employment Act ("AREA"), 29 U.S.C.63 1 et seq. The Respondents violated Petitioner's Constitutional Rights by discriminating against her due to her age and retaliation.

Title VII of the Civil Rights Act of 1964 prohibits discrimination due to sex, 41.36, disability and medical condition, national origin, race, color religion, physical disability, mental disability, also (FEDA). The Respondents violated Petitioner's Constitutional Rights by their discrimination due to her sex, and mental and physical disabilities.

In Addition, Petitioner's Constitutional Rights were violated when she was not allowed to continue her employment to the full extent. Petitioner was subjected to continued harassment, disparate treatment and a hostile work environment, and through the Respondents discriminatory acts of abuse, Petitioner was forced into involuntary retirement., which constitutes a constructive discharge.

Petitioner's Constitutional Rights were violated when she was not allowed to utilize the number of employees to get her job done as

the other supervisors. When she was forced to work short.

Petitioner's Constitutional Rights were violated when she was forced to help the employees work in addition to performing her supervisory duties in an effort to avoid being removed from the Postal Service, and the other younger male and female supervisors were favored over her.

Petitioner's Constitutional Rights were violated when the Respondents refused to accommodate Petitioner in regards to her disability, by allowing Arlene Colbert to work on a light duty assignment and Petitioner's request was denied. The (ADA) of 1990 and Section 503 and 504 of the Rehabilitation Act of 1973 and Title 42 U.S. Code 1981, prohibit discrimination due to Petitioner's disability.

The ADA and the Rehabilitation Act defines, is similar but not identical, the protected category of an "individual with disability." The ADA defines "individuals with disabilities," and the Rehabilitation Act defines an "individual with disability" (labeled in the original version of the Act as an "individual with handicaps"), as including any individual who: 1. Has a physical or mental impairment that substantially limits one or more of such person's major life activities; 2. Has a record of such an impairment; or 3.

Is regarded as having such an impairment. In applying this definition, three questions must be generally be analyzed: (1) is there an impairment?: (2) does the impairment affect a major life activity?; and (3) does this effect rise to a substantial limitation? Petitioner's mental and physical disabilities can be applied to this definition.

Petitioner's Constitutional Rights were violated when she was forced to work in a hostile work environment from 1992 to 1999, and their discriminatory abuse did in fact cause Petitioner's total mental and physical disability. Petitioner is continuing to experience the disassociation episodes, the latest episode was on April 1, 2009 when she had an encounter with a woman, she made several embarrassing statements and was unable to eat or sleep for two days, until she contacted the person to apologize. Also, for the aforementioned reason. Petitioner is unable to hold a job and she is fearful of being in any social gatherings.

Petitioner's Constitutional Rights were violated when her Merit Increase and Bonus Pay was denied. And all other supervisors in her unit was given their merit increase and Bonus pay, except for Francis Webb who had been off for ten years.

Petitioner's Constitutional Rights were violated when she was forced to work sacks of mail only, while Supervisor, Louis Buckingham and Supervisor Arlene Colbert were not forced to work sacks of mail only.

Petitioner's Constitutional Rights were violated through the Respondent's continued discriminatory acts and abuse has caused Petitioner's physical and mental impairment that limits one or more of her major life activities.

According to the ADA regulations , physical impairment includes, any physiological disorder, or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs) cardiovascular, reproductive, digestive genito-urinary, heroic and lymphatic, skin and endocrine. A mental impairment includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. Petitioner's major life activities continues to become more substantially limited on a daily basis.

These cases are a casual link between Petitioner's case. *Head v. Glacier Nw., Inc.* 413 F3d 1053, 1060, 16 AD 1606 (9th Cir. 2005) ("interacting with others is a major life activity") *Jacques v. DiMarzio*, 386 F.3d 192, 200 (2d Cir. 2004) ("interacting with others is a major life activity under the ADA"); *Ray v. Kroger Co.*, 264 F. Supp 2d 1221, 1226, (S.D. Ga.) aff.'d 90 Fed Appx. 384 (11t Cir. 2003).

Petitioner's mental impairment is substantially limited in regards to interacting with other, because her disassociation episodes has continue from 1999 to present.

STATEMENT OF FACTS

No. 08-1091

On March 30, 2009, this court issued its decision in this case, attached to this petition. For the reasons stated above Petitioner is requesting that a Rehearing be granted. Petitioner's Attorney, John L. Taylor's fee for representation of Petitioner was \$20,000.00. Petitioner did not have the funds available.

ARGUMENT

It is clear that Petitioner's Constitutional Right has been violated due to the Respondents continued disregard for Federal laws prohibiting Discrimination in employment.

The Respondent's violation of Petitioner's Constitutional Rights, forced her into involuntary retirement, causing her to loose her job in 1999, and she can never be gainfully employed again. Also, The Supreme Court has stated that the word major means important, but that major life activities are not limited to those aspects of a person's life that have a public, economic, or daily character. See: *Bragdon v Abbott*, 524 U.S. 624, 638-39, (1998)

The EEOC regulations gives us examples of major life activities, caring for oneself, performing manual tasks, walking, seeing, hearing speaking, breathing, sleeping, eating, drinking, toileting, controlling one's bowels, waste elimination, learning and working. This list is illustrated and not exclusive. EEOC guidelines also lists sitting, standing, lifting, reaching, as well as mental and emotional processes such as thinking, concentrating, interacting with others, and reading and writing. In addition to those examples given by the EEOC, case law is largely consistent in finding the following to be major live activities under ADA: caring for oneself, bathing and dressing. Petitioner is substantially limited to one or more of her life activities.

The following information are examples of how Petitioner's mental and physical impairments substantially limits Petitioner's life activities. Caring for oneself, it is difficult at times for Petitioner to care for herself. Example, cooking, many days and nights she will go to bed without eating because she lacks the energy to prepare her food. Petitioner, has difficult performing manual tasks such as, house

cleaning, washing, ironing etc. She often get assistance every two weeks to perform those tasks. Petitioner has difficulty walking and running outside of her home. Prior to Petitioner's mental and physical impairments she would go for a walk in connection with some running for at two miles on a daily basis. She has difficulty seeing hearing and breathing at times. Breathing, many times Petitioner has difficulty breathing when her stress level has increased due to every day problems. She has feelings of choking when eating and drinking at times.

Doe v. County of Centre, 242 F.3d 437, 447 (3d Cir. 2001) decided under Title R. *Toyota Motor Mfg.*, 534 U.S. at 197, (stating that major life activities include "such basic abilities as walking, seeing and hearing).

Petitioner has difficulty sleeping, many times she continues to stay awake through the night. Petitioner has difficulty eating and drinking. She is required to choose very carefully the kind of food that she eat, the food often will not digest. Also, Petitioner has a problem when drinking water or other liquids. Petitioner often vomits rather than digesting her food. Toileting, Petitioner's irritable bowel syndrome has substantially limited the major life activity of bowel control. See *Workman v. Frito-Lay, Inc.* 165 F.3d 460, 8 AD 1761 (6th Cir. 1999). (waste elimination, processing and cleaning one's own blood and eliminating body waste is a major life activity under A. Petitioner's learning and work life activities is totally limited because she will never be able to hold a job and her learning is affected due to her being unable to concentrate. Also, see *Amir v. St. Louis Univ.* 184 F.3d 1017, 1027, (8th Cir. 1999); *Phillips v. Wal-Mart Stores Inc.* 78 F. Supp. 2d 1274, 1282 (S.D. Ala. 1999).

Petitioner also, has difficulty sitting and standing for long periods of time. When Petitioner prepare her meals for herself she is required to rotate between sitting and standing, she must sit for breaks in order to prepare a meal for herself. Lifting and reaching, Petitioner is unable to do no heavy lifting, and when she reaches to high she often get dizzy and she might fall. Petitioner needs extra time for thinking, when speaking or interacting in public, she is required to prepare her speech ahead of time, otherwise she will get confused and will be unable to continue speaking.

Petitioner has difficulty concentrating, when she is talking she often loose her thought in the middle of the conversation. Peti-

tioner has difficulty bathing and dressing, many times she will go without bathing and dressing for several days, because she lacks the energy to get out of bed, and the long length of time that it takes to bath and dress irritates petitioner.

These cases are a casual link between Petitioner's case. *Forest City*, 175 F.3d at 151; see also, *Schwertfager*, 42 F Supp. 2d at 1359. (finding dressing oneself to be a major life activity, but finding no substantial limitations); *McKey v. Occidental Chem. Corp.* 956 F. Supp. 1313, 1318 (S.D. Tex 1997).

In addition, Petitioner's Constitutional Rights were violated by the Respondents because the following list of major life activities, such as eating, sleeping, drinking, sitting, and performing manual tasks that are central to daily life has been substantially impaired by the Respondents' disregard for the Federal Laws and their continued discriminatory abuse to Petitioner for almost a decade. *Coghlan v. H.J. Heinz Co.*, 851 F. Supp. 808, 814 (N.D. Tex 1994) see also EEOC Enforcement Guidance on Americans with Disabilities Act and Psychiatric Disabilities, No. 915.002 (march 25, 1997). See *Fraser*, 342 F.3d at 1039-40; *Waldrip v General Elec. Co.*, 325 F.3d 652, 655 (5th Cir. 2003).

Petitioner's Constitutional Rights were violated when the Respondents unlawfully discriminated against on the bases of Sex and Retaliation Under the Title VII of the Civil Rights Act, 42 U.S.C., 631 & the Age Discrimination under ADEA 29 U.S.C., 631 et seq.

The Respondents discriminated against Petitioner due to her age, when supervisor, Buckingham (DOB) 09-02-48 and Francis Webb (DOB) 12-22-51), was allowed to change their Scheduled Days Off and Petitioner's request was denied. Petitioner's Constitutional Rights were violated when the Respondents discriminated against her due to her sex when the younger male supervisors, Joe Perkins and Louis Buckingham was treated more favorably than Petitioner, when they were allowed to utilize more employees to get their job done. The Respondents violated Petitioner's Constitutional Rights when they retaliated against Petitioner for EEO activity by forcing her to work short, and by continuing to instruct her to work sacks of mail only. Section 704 of Title VII prohibits retaliation against an employee for opposing unlawful discrimination. *McGinnest v GTE Serv. Corp.* 360 F.3d 1103, 1124, (9th Cir. 2004) citing 42 U.S.C. 200-e3(a).

Petitioner's Constitutional Rights were violated when she was subjected to continued harassment, disparate treatment and a hostile work environment, and by the Respondents discriminatory acts and abuse, petitioner was forced into involuntary retirement, which constitutes a constructive discharge. Also, due to the Respondents disregard to Federal Law, Petitioner's working conditions caused her life to become a living hell and her health deteriorated, forcing her into involuntary retirement.

City of Moorpark v. Supreme Court (1998) 18 Cal. 4th Cir. 1143, 11161, 77 Cal Rptr., 2d 445, 959, p.2d 752.

Petitioner's Constitutional Rights were violated when the Respondents forced her to work under a hostile environment, from 1992-1999 and the emotional distress caused by Petitioner's working conditions resulted in Petitioner's total mental and physical disabilities. The facts in this case is similar to the case of *Schmidt v. Safeway Inc.* M. Or. 1994) 864 F. Supp. 991, 997. *Faust v. California Portland Cement Co.* (2007) 150 Cal. App. 4th 824, 887, 58 Cal. Rptr..3d 729.

Petitioner's Constitutional Rights were violated when the Respondents refused to accommodate Petitioner in regards to her mental disabilities, when Sr. MDO. Mr. Nathan Griffin would not allow Petitioner to work on a light duty assignment, while he approved Supervisor, Arlene Colbert's request and he allowed her to work on a light duty assignment.

Petitioner's Constitutional Rights were violated when the Respondents denied Petitioner's merit increase and EVA pay, by using a letter of warning for an accident, which did not relate to Petitioner's performance, Title VII of the Civil Rights act of 1964 prohibits retaliation against and individual for filing a charge of discrimination.

In regards to the major life activity of thinking & reading:

See *Head*, 413 F3d at 1061, *Shaver v. Independent Stave Co.*, 350F.3d 716, 720-721 (8th Cir. 2003); *Nawrot v. CPC, Int'l*, 277 F.3d 896, 306, 903, 905,(7th Cir. 2002). In regards the major life activity of learning: *Bercovitch v. Baldwin Sch., Inc.* 133 F3d 141, 155 (1st Cir. 1998) (educational claim under the Rehabilitation Act) 113 F. Supp. 2d at 1329. In regards to the major life activity of concentrating: See, *Gagliardo v. Connaught Labs., Inc.* 311 F .3d 565, 569, (3rd Cir. 2002) (suggesting that concentrating and remembering may be a part of the more general activity of "cognitive functions").

The Supreme Court has suggested that manning may be a

major life activity, Sutton v. United Air Lines, Inc. 527, 488, 9 AD 673 (1999) ("one has a disability, if notwithstanding the use of corrective device, that individual is substantially limited in major life activity. For example, individuals who use prosthetic limbs or wheel-chairs may be mobile and capable of functioning in society but still be disable because of a substantial limitation on their ability to walk or run. Petitioner's physical and mental Impairments has substantially limited her ability to r uz, since she walked and sometimes ran prior to her disability.

In addition, most of the major life activities that are central to Petitioner's daily life has been substantially impaired due to the Respondents' disregard to Federal laws.

CONCLUSION

The Petition for Panel Rehearing should be granted.
Respectfully Submitted.

s/
Mrs. Johnnie L. Brown,
Petitioner
4851 Walnut Street
Oakland, CA 94619-2558

April 24, 2009